S. Hrg. 100-927

RETURN LAND TO THE QUINAULT INDIAN NATION

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 2752

TO DECLARE THAT CERTAIN LANDS BE HELD IN TRUST FOR THE QUINAULT INDIAN NATION

SEPTEMBER 12, 1988
WASHINGTON, DC

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RETURN LAND TO THE QUINAULT INDIAN NATION

MONDAY, SEPTEMBER 12, 1988

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:04 p.m., in room 485, Russell Senate Office Building, Hon. Daniel J. Evans (vice chairman of the committee) presiding.

Present: Senator Evans.

STATEMENT OF HON. DANIEL J. EVANS, U.S. SENATOR FROM WASHINGTON, VICE CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

Senator EVANS. This hearing will please come to order.

Good afternoon and welcome to this hearing on S. 2752, a bill to return land to the Quinault Indian Nation.

It is oftentimes the duty and obligation of Congress to review past laws and policies of our Government, and as our knowledge and understanding of what is right and what is wrong expands, so must our laws change to reflect that understanding. We recently saw a prime example of that in the passage of the Japanese reparations bill.

In 1892, a surveying error erroneously excluded 15,000 acres from the Quinault Indian Reservation. Since that time, the land has been administered by the National Forest Service. The Quinault Indian Nation has pursued a claim for the return of their lands for many years and I am pleased that today's hearing draws us one step closer to correcting this injustice. I am hopeful that, with enactment of this legislation, the Quinault Nation will be able to better manage their reservation lands and will be provided with a more stable land base for economic development opportunities for the entire population of the Quinault Reservation.

[Text of S. 2752 follows:]

100TH CONGRESS
2D SESSION

S. 2752

To declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 11 (legislative day, AUGUST 10), 1988

Mr. EVANS introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXPANSION OF QUINAULT INDIAN RESERVATION.

The Quinault Indian Reservation shall be expanded to include those lands within the boundaries of the Olympic National Forest generally depicted on the map entitled "North Boundary Expansion, Quinault Indian Nation", numbered and dated, , which shall be on file and available for public inspection in the offices of the Chief, Forest Service, and of the Assistant Secretary for Indian Affairs, Department of the Interior, and of the tribal offices of the Quinault Indian Nation.

SEC. 2. ADMINISTRATION OF LANDS.

All right, title, and interest in lands which are owned by the United States and administered by the United States Forest Service and which are referred to in section 1 shall be administered by the Secretary of the Interior and are declared to be held in trust by the United States for the Quinault Nation and to be part of the Quinault Indian Reservation.

SEC. 3. COUNTY RECEIPTS FROM NATIONAL FOREST TIMBER SALES.

The proportional distributive shares of the respective counties of receipts from the sale of timber in the remaining lands of the Olympic National Forest shall not be affected by the transfer of lands pursuant to this Act.

SEC. 4. LIMITATIONS ON TIMBER HARVEST.

(a) The Secretary of the Interior shall not approve any sale of unprocessed timber from lands referred to in section 1 which will be exported from the United States, or which will be used as a substitute for timber from private lands which is exported by the purchaser: *Provided,* That this limitation shall not apply to specific quantities of grades and species of timber which the Secretary determines are surplus to domestic lumber and plywood manufacturing needs.

(b) In addition to restrictions referred to in subsection (a), lands referred to in section 1 shall be administered in the same manner as lands which are subject to the restrictions of the Grays Harbor sustained yield unit administered by the Forest Service.

SEC. 5. EXISTING RIGHTS-OF-WAY AND OTHER INTERESTS.

Nothing in this Act shall deprive any person or entity of any valid existing right-of-way, lease, permit, or other right or interest which such person or entity may have in any of the lands referred to in section 1.

SEC. 6. ACCESS TO NATIONAL FOREST LANDS.

The Secretary of the Interior shall allow such rights-of-way through lands referred to in section 1 as the Secretary of Agriculture, in consultation with the Secretary of the Interior and the Quinault Indian Nation, considers necessary to provide access to National Forest lands. Such rights-of-way shall be located and used in such manner as the Secretary of the Interior, in consultation with the Secretary of Agriculture and the Quinault Indian Nation, determines to be appropriate.

SEC. 7. USE OF TIMBER SALE PROCEEDS.

The Secretary of the Interior shall maintain a segregated account and shall deposit in such account all funds derived from the sale of unprocessed timber from the lands referred to in section 1. The Secretary shall make such funds available only for—

(a) cost incurred by the Quinault Indian Nation for the preparation and administration of timber sales on such lands;

(b) the mitigation of any adverse environmental impacts from timber harvest activities on such lands;

(c) reforestation of any lands referred to in section 1 or any other lands held by the Quinault Indian Nation within the external boundaries of the Quinault Indian Reservation; or

(d) the purchase from willing sellers by the Quinault Indian Nation of any lands or interests in lands within the external boundaries of the Quinault Indian Reservation and any costs incurred by the Quinault Indian Nation incident thereto.

○

Senator **Evans**. I might say, in passing, that I, from a different responsibility, urged and, at least in a small way, I suspect, was partially responsible for a similar case affecting the Yakima Indian Nation in the return of land on Mount Adams, which occurred in the Nixon administration.

With that, I think we ought to get right into the testimony, and I would first like to bring forward to the witness stand Mr. James Overbay, Deputy Chief, National Forest Service, U.S. Department of Agriculture.

Senator **Evans**. And each witness can please proceed in the way you choose. All of the written statements which have been submitted will be entered in full into the record, and you may proceed to summarize or, in whatever method possible, proceed with your testimony.

Mr. Overbay.

STATEMENT OF HON. JAMES C. OVERBAY, DEPUTY CHIEF, NATIONAL FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, DC, ACCOMPANIED BY PAUL STOCKINGER, LEGISLATIVE RESOURCES SPECIALIST

Mr. **Overbay**. Thank you, Mr. Chairman. I have with me at the witness table Paul Stockinger, who is with our Legislative Affairs Branch of the Forest Service.

I do appreciate this opportunity to testify on Senate 2752, a bill which would declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes.

The Department of Agriculture opposes enactment of this bill for the following reasons:

If enacted, the bill would transfer about 10,093 acres of the Olympic National Forest to the Department of the Interior to be held in trust for the Quinault Nation as a part of the Quinault Indian Reservation. An additional 5,900 acres of the Olympic National Forest would be transferred to the Quinault Nation in lieu of a transfer of certain other lands within the area of the original claim. These other lands are currently owned or under the jurisdiction of the National Park Service, the State of Washington, and private landowners.

A brief summary of the history of the Quinault claim is helpful in discussing the legislation. Following passage of the Indian Claims Act of 1925, the Quinault Nation filed a claim for the lands along the north boundary of the reservation. The claim for these excluded lands was adjudicated in the Court of Claims in 1945 and 1951. In the final adjudication, the Court determined that the boundary had been erroneously surveyed, and lands were excluded from the reservation. The Court found that although the tribe was entitled to a monetary award of damages from the United States for these excluded lands, the damages due were offset by payments and gratuities provided by the United States to the Quinault Tribe.

Throughout this century, the Federal Government has attempted to settle native American claims resulting from non-Indian settlement and development of the United States and subsequent taking of Indian lands. These attempts have only been partially successful. Various jurisdictional statutes have provided for legal remedies, which have been principally monetary damages. The Indian Claims Commission Act of 1946 was the broadest attempt to provide a mechanism for resolving legal and equitable claims. By the time the commission expired in 1977, over 491 claims were docketed and awards in excess of $707 million were made in 233 cases.

Our principal concern with this legislation is the transfer of 5,900 acres of National Forest land to compensate for disputed lands now owned or under the jurisdiction of the Olympic National Park, the State of Washington, and private landowners. The National Forests are not a reservoir of land from which all claims are to be resolved. In 1897, President Cleveland reserved the lands which became the Olympic National Forest for very specific national purposes. These purposes are no less important than those of National Park, State, or private lands. Furthermore, the transfer of lands under S. 2752 would restrict access to the remaining National Forest lands, and we have some concerns about this.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions that you may have at this time.

[Prepared statement of Mr. Overbay appears in appendix.]

Senator EVANS. I thank you, Mr. Overbay.

First, I am not quite sure from your testimony whether the service is—or the Government is in opposition to the basic equity of the land itself—in other words, the error that was made—or it's the particular lands that are being utilized, especially the in-lieu-of lands.

Let's start with the basic. Is it the position of the Forest Service and the Administration that this is an unnecessary trade because it's already been compensated for in past years?

Mr. OVERBAY. That generally is the position of the Administration, Mr. Chairman. The principal concerns that we have, though, is the selection of the 5,900 acres in lieu of.

Senator EVANS. Now let me get to that. But leaving that totally aside, there would be opposition. What if all of this land came from the Olympic National Park, or from private landowners, instead of any from the Forest Service. Would you still be opposed to it?

Mr. OVERBAY. Well, I don't know what the Administration's position would be on that. I'm sure the Park Service would have some particular concerns about that. But we do recognize that there was an error in the survey, that there have been other precedents set in other cases in this regard.

Senator EVANS. But that's what I'm really trying to get at. You do recognize the original error in the survey. There is little question as to that fact, is there?

Mr. OVERBAY. That's correct.

Senator EVANS. OK. And then, I guess there are two somewhat conflicting directions you can take from that, having decided that there was an error and land was inadvertently left out of the boundaries of the Quinault Reservation, some are suggesting, presumably, that there has been compensation over the years that, in essence, paid for that. Others have suggested that there is ample precedent for similar cases where the government has made good on its original errors.

And I guess, which one of those two directions do you take in this case?

Mr. **Overbay**. The Administration's position is that this claim has been adjudicated and there was compensation.

Senator **Evans**. How does this differ from, for instance, the Yakima Indian Nation claim and the resulting transfer on Mount Adams and the Warm Springs McQuin Strip claim which was——

Mr. **Overbay**. The principal difference in this particular case is the addition of the 5,900 acres which would be used to offset other lands within this particular strip. It's my understanding that neither of those other claims that you cited, had that particular provision in it.

Senator **Evans**. That's a little bit of a side issue, but I think that it's an important one. In the case of those other circumstances, were there similar representations made that there had been compensation due and paid to the tribe in earlier times that compensated for any error that there might have been?

Mr. **Overbay**. Senator Evans, I'm not real sure what the testimony was on those particular bills. It's my understanding that the position of the Administration has been constant in opposing, generally, these kind of proposals.

Senator **Evans**. I'm not sure that's totally true. At least there was considerable fanfare at the time of the exchange or the restitution of land to the Yakima, and that was done by executive order of President Nixon. So certainly the administration at that time thought that that was a pretty good idea. I think the Warm Springs was the same way, was it not? That may have been legislation. But, at least, I am quite familiar with the Yakimas and do know that that was through executive order, and I guess the administration at that time must have approved it.

Mr. **Overbay**. Yes.

Senator **Evans**. You mentioned the National Forests are not a reservoir of land from which all claims are to be resolved. And, of course, that's true. We can't just look on forest lands as sort of a bottomless pit from which we can do everything and end up not being able to carry out the functions of the national forests as they were set aside.

At the time, you mentioned, in 1897, President Cleveland reserved the lands which became the Olympic National Forest for very specific national purposes.

At that time, did the 1897 Executive Order intend to include any of the Quinault Reservation inside the National Forest Reserve?

Mr. **Overbay**. It did not. The description was that it was the land that lay adjacent to the Quinault Reservation.

Senator **Evans**. So, since 1897 to the present date, the Forest Service and the people of the United States, for that matter, with the exception of the Quinault, have had the benefit of the use of land which was never intended to be in the National Forest in the first place. Is that substantially correct?

Mr. **Overbay**. That's correct.

Senator **Evans**. Doesn't that put a cloud on the current management or ownership of that section of forest?

Mr. **Overbay**. Well, only if you disagree that the claim was adjudicated back in 1951. You know, our position is that that was adjudicated at that time.

Senator EVANS. It was adjudicated. There was no question in that court suit, however, of the error in the boundary, was there?

Mr. OVERBAY. Well, I think the finding was that there was an error in the boundary, and that the Quinault Nation was due compensation, but that they had already been compensated in terms of monies and other items that had been supplied by the Federal Government.

Senator EVANS. Presumably, that court case gave some compensation for what, presumably, at that time was the lost to the Quinault. How about the gain from management and sale of timber and other purposes to the Forest Service, and through the Forest Service to the Government of the United States, on land that they, presumably, didn't own?

Mr. OVERBAY. There have certainly been——

Senator EVANS. Kind of a bonus, or windfall?

Mr. OVERBAY. There's been benefits to the Federal Government from the resources that have come off that land, certainly. But, again, the position is that the case was adjudicated and the Quinault Nation was compensated.

Senator EVANS. In that adjudication, do you know whether that was even part of the adjudication or that was even considered? Any gains that the United States might have gotten off the lands that were not really authorized?

Mr. OVERBAY. Senator, I don't have that specific information. I would be happy to provide that for you if you would like.

Senator EVANS. I think it would be helpful for the record as to the nature and amount of the monetary damages to the Quinault Nation and the nature and amount during that period of time from 1897 to the current time that has accrued to the government, or at least some reasonable estimate of that from the use and management of the national forest.

Mr. OVERBAY. We will provide that.

[The requested information follows:]

SUMMARY OF ACTIVITY OR RECEIPTS ON AREAS OF THE OLYMPIC NATIONAL FOREST INCLUDED IN S. 2752

From the period following the Court of Claims settlement to the present, we estimate that roughly 3,400 acres of timber were harvested. The receipts to the Federal government totalled over $8 million. The time period is from 1953 to 1988.

Information on activity prior to 1951 is sketchy at best. We do not have any receipt information or volume figures readily at hand. A search of Federal archives may help, but would take several months to retrieve. Records we do have indicate two periods of activity after 1897. The 1900 to 1922 period shows activity on 80 acres. Most likely this was spruce harvest in conjunction with the World War I. The next period of activity occurred during the World War II period and affected 730 acres. Again, we believe this to be spruce harvest. It would be difficult to establish the actual volume or value of the timber harvested during this early time period.

We have no records that indicate that the value of the harvested timber was taken into account during the Court of Claims proceedings on this case. We will check with the Department of Justice to see if they have this information.

Senator EVANS. There are several directions we can take here now. Let's start with the assumption that we do recognize the error of the boundary and, in spite of what the courts decided 35 years ago, that it is the right thing to do to return that land to the Quinaults.

What should we do then? We've got National Forest lands, we've got Olympic National Park land, we've got some private lands, and some state land, all within that slice that was in error.

Do you have any suggestions as to how best to do that if we don't through in-lieu-of land?

Mr. OVERBAY. We do have some other possible remedies. One that we have talked about that you might want to consider is setting aside receipts from the sale of timber off the national forest to be made available. Generally we would oppose that sort of thing, but that might be an option which would allow compensation but still leave those lands in public ownership.

Senator EVANS. You're talking now about the in-lieu-of?

Mr. OVERBAY. The in-lieu lands, yes. And we would be happy to work with the——

Senator EVANS. You're talking about compensation coming off the in-lieu lands or just compensation of some amount from general——

Mr. OVERBAY. We haven't worked out the details on that, Senator. We would be happy to work with the committee on that, though.

Senator EVANS. Would that, presumably, be revenue set aside in order to provide for purchase of those remaining lands, or would you just leave the ownership of private, state, and park lands within the boundaries of the reservation?

Mr. OVERBAY. Well, I assume that the proposal would not include the transfer of the park lands specifically. Of course, those wouldn't have to be purchased from the United States, so the receipts could be available for purchase of those other lands or to compensate for that lost land base, either way.

Senator EVANS. OK. I think that's all the questions we have at the moment. We may well have some other questions for the record that we would send on to you.

Mr. OVERBAY. OK.

Senator EVANS. Thank you, very much for your testimony.

The next witness is Mr. Brock Evans, representing the Olympic Park Associates.

STATEMENT OF BROCK EVANS, REPRESENTING POLLY DYER, PRESIDENT, OLYMPIC PARK ASSOCIATES, WASHINGTON, DC

Mr. EVANS. Thank you, Mr. Chairman. I am Brock Evans here, and I am presenting a statement on behalf of our mutual friend, Polly Dyer, who is President of Olympic Park Associates. I am a member of that organization myself.

The Olympic Park Associates is pleased to lend its support to S. 2752, which we believe will return to the Quinault Nation lands which clearly and justly belong to them.

Too often in our history our government has failed to follow through on promises made to sovereign Indian peoples. While citizens of the United States have benefited and prospered by lands ceded to us by their original inhabitants, we're sorry to say that we have been remiss, time after time, in fulfilling our side of the agreements. It is shocking that, at present, less than 4 percent of the nearly 200,000 acre Quinault Reservation is owned by or held in trust for the Quinault Nation, and we feel that this bill offers us a chance to correct the wrong inflicted on the Quinault people a long time ago.

As an organization concerned with the environmental health and natural integrity of the Olympic Peninsula, Olympic Park Associates has held a long-standing interest in the rich forest lands and wildlife habitat of the Quinault valley. A significant portion of the forest service lands affected by this bill contain excellent stands of low-elevation old growth forest. Forests of this type support a host of plant and wildlife populations which include the threatened Northern spotted owl, as well as the endemic Olympic mud minnow, and other sensitive species. Also, an estimated 15 percent of these lands serve as important winter range for resident populations of Roosevelt elk.

And one reason we want to appear here today, Mr. Chairman, is to highlight these issues that are important. There is more at stake here than just timber, as far as natural resources are concerned.

Through active involvement in planning efforts of Olympic National Forest and Olympic National Park, Olympic Park Associates has worked for the preservation and sensitive management of these natural communities. As a result of our efforts, and the efforts of other concerned groups and individuals, a sizable portion of the lands concerned with this bill were allocated to a visual quality management of retention and partial retention in Olympic National Forest's Land Use Plan for the Quinault Planning Unit. This plan, as you know, was finalized in 1976 and is the current plan directing management of the land. While this type of management does not preclude timber harvest, it does direct that harvest activities be designed in a visually sensitive way. By limiting the size and extent of timber cutting in these areas to 75 percent of the full allowable cut, it does provide for the retention of natural stands and the use of lengthened rotations. Both will serve to protect the important habitats and migration corridors we mentioned.

So we would strongly recommend, Mr. Chairman, that language be added to this bill directing that these lands be managed, at a minimum, under existing forest service constraints on timber harvest, and that particular attention be paid toward protecting elk winter range areas and old growth forest communities. The Forest Service is currently developing management policy for spotted owl habitat areas and habitat areas for other sensitive species. We also recommend that these directives be included in the bill for any known occurrence of these species within the lands to be exchanged. Such language would be comparable with that under section 4 of the bill, directing that the exchanged land shall be administered under the provision of the Grays Harbor Sustained Yield Unit, and we would be happy to work with staff and submit such language soon, Mr. Chairman.

We were unable to discern, from maps we had available, whether any of the forest service lands to be exchanged occurred within the Quinault Research Natural Area. It appeared to us that they did not. However, we want to go on record here as opposing the exchange of any lands that occur within this unit of the national forest.

I am sure you are aware, Mr. Chairman, this is a very significant stand of ancient forest, old growth forest. In fact, it has always been the place that I would take out-of-state visitors to see a readily accessible kind of very superlative old growth forest, and we would hate to see this be a part of the exchange.

We are pleased to see the restriction on the export of unprocessed logs or export-exchange sales included in the legislation, and we are particularly pleased to see that timber sales proceeds will be used for environmental mitigation and purchase from willing sellers of lands within the reservation presently owned by nontribal members.

So we thank you for your attention, and we hope that our comments will be of use in your final deliberation, and we hope that the bill passes in a timely fashion.

Thank you.

[Prepared statement of Polly Dyer appears in appendix.]

Senator EVANS. Thank you very much for your testimony.

There are a couple of questions raised by that testimony, but I think they are questions which we will have to ask specifically of the Forest Service itself, as to the boundaries of Quinault Research Natural Area, and some of the other specialized management areas. So we will do that. And thank you very much for your testimony.

Mr. EVANS. Thank you, Senator.

Senator EVANS. Next is Mr. Dennis Whittlesey, on behalf of the Chehalis, Cowlitz and Chinook Indians of Washington State.

STATEMENT OF DENNIS J. WHITTLESEY, ESQ., ON BEHALF OF THE CHEHALIS, COWLITZ, AND CHINOOK INDIANS OF WASHINGTON STATE

Mr. WHITTLESEY. Good afternoon, Mr. Chairman.

My name is Dennis Whittlesey. I have prepared some written comments with an attachment, which I would ask be made part of the record of this hearing today.

Senator EVANS. The entire statement will be made a part of the record.

Mr. WHITTLESEY. Initially, for the record, Mr. Chairman, I am legal counsel to the people that I am speaking on behalf of, and we do thank the committee for permitting me to attend, since my clients weren't able to be here on such short notice.

I am here today on behalf of three Indian tribes, the federally recognized Chehalis Tribe of actually Oakville, Washington, although my prepared comments say Chehalis, Washington; the Chinook Tribe, not federally recognized but presently seeking federal acknowledgment, of Chinook, Washington; the Cowlitz Tribe, not federally recognized but currently seeking federal acknowledgment, of Tacoma, Washington; and finally, your Honor, one individual, Helen Sanders, who is the lead named plaintiff in the well-known and long-standing Mitchell litigation concerning the mismanagement of the forest at the Quinault Indian Reservation.

The purpose for the objection of my clients, Mr. Chairman, is, and perhaps it was reflected in, with all due respect, your opening remarks, when you said that the purpose of this legislation was to return land to the Quinault Nation that had been taken from the Quinault Indian Nation, or the Quinault Indian Tribe, if you will. It is adjudicated, through the Halbert case in 1931, that this is a reservation that was established not for the Quinault Tribe, but as a matter of law and, as a matter of fact, for eight Indian tribes. One, the Quit, is now part of the Quinault Tribe. Three of the remaining seven are represented by me here today.

In addition to the 1931 Supreme Court determination, your Honor, in 1945—your Honor—Mr. Chairman, in 1945, as you know full well, the Court of Claims determined that the Quinault Tribe could not litigate the boundary taking, since it was only one of eight tribes for whom the reservation was established. We don't deny that an error in survey occurred. In fact, I think the acreage is probably not subject to too much dispute. I think it's fairly well established both in the Court of Claims and, as a matter of fact, it's somewhere in the neighborhood of 15,000 acres.

But what is disputed is that the Quinault Tribe should receive this land in trust. The land was taken from eight tribes. And I might add in this respect, Mr. Chairman, and it is incorporated within the exhibit to my testimony, in 1914 the Federal Government, by Act of Congress, took a parcel out of the reservation for lighthouse purposes. This is referred to in my exhibit. And, in so taking that land by Act of Congress, the Congress determined that the Indians should be paid for the taking of that land, but by the act of 1914, Congress stated, and this is a direct quote from the statute, and I believe it's quoted at pages 5 and 6 of the attachment to my testimony, that the payment should be made to the Indians, to the credit of the Indians of the Quinault Reservation. Congress, in 1914, carefully crafted language designed to deal with the law and the fact of that reservation.

In 1947, Congress again carefully crafted legislation to deal with the Quinault situation. It didn't say, in the 1947 legislation, which I know the committee staff has copies of, we're going to permit the Quinaults to speak for all purposes for the reservation, it permitted the Quinault Tribe to litigate on behalf of the bands and tribes for whom that reservation was created. And I might add, in 1951, when the Claims Court reviewed and revisited the case, the Quinaults litigating on behalf of those tribes, the Claims Court did not find that the set-offs were taken from the Quinault Tribe.

At 220 Court of Claims, page 231, they conclude that the GAO report in that case determined the disbursement that had been made for the benefit of the plaintiff tribes, plural, and bands, plural, and they then determined the amount, and the term tribes, plural, and bands, plural, was repeated in that same decision later on that same page.

The Claims Court in 1951 understood full well the Quinaults were being given authority for the limited purpose of that litigation only, to speak for the other bands and tribes for whom the reservation was established.

So with this, your Honor, we would submit—your Honor, I do apologize, Mr. Chairman.

Senator EVANS. That's quite all right.

Mr. **Whittlesey**. That the Quinault Tribe is, indeed, a recognized tribe, as is one of my clients, the Chehalis Tribe. The Quinault Tribe, however, does not embody the Quinault Reservation.

In Mr. De La Cruz's prepared comments as well as, I believe, in Mr. Evans's comments, it's noted that there is a fairly small percentage of this reservation that belongs to the Quinault Tribe. That's correct. And there's a reason for it. It's because this is the reservation created for the peoples of eight tribes.

In 1935, pursuant to the Indian Reorganization Act of 1934, an election was held at this reservation to determine whether or not it would be an IRA reservation. All of the Indian groups and bands for whom the reservation was established were permitted to vote, including my three tribal clients. Subsequent to the adoption of the IRA, or rather, under the peculiarities of that statute, the nonrejection of the IRA, the Quinault Tribe—and we have the documents in our files to validate this—leaned on the Bureau of Indian Affairs to not go forward with the second step, which was the establishment of an IRA tribe. And I have in my files, and I believe your staff has in theirs, the internal BIA memoranda showing that today the Quinault constitution is not an approved document and, in fact, I believe has been determined to violate federal law in three distinct places.

The ownership is not Quinault. Throughout the hearing thus far, it has been referred to as Quinault timber. It's Quinault Reservation timber.

Now, I agree with Mr. De La Cruz's prepared comments when he describes the legislation as unique and creative, because it would do what Congress did not do, and I think carefully did not do in 1914, I think carefully did not do in 1947, and that is pass legislation which would almost, in fact, recognize the Quinault Tribe as the governing body of the reservation.

As my prepared comments reflect, I am about to file litigation within the next several weeks specifically on this issue, as a follow-through to the *Wahkiakum* case and the *Williams* v. *Clark* case. I represent, for the purpose of this litigation, not only the three tribes I speak for today, but individual enrollees at Quinault, Quileute, Hoh, and Makah, the remaining four tribes for which this reservation was created. We believe it's time that the governance of this forest was adjudicated as a matter of federal law, and we believe the precedents are strongly in our favor.

I think that completes what I would say here today. I certainly would welcome any questions you care to direct my way, but I do believe the law is clear, I believe it's adjudicated, and I think this legislation would return to the Quinaults what was taken from seven extant and identifiable Indian tribes.

[Prepared statement of Mr. Whittlesey appears in appendix.]

Senator **Evans**. First, it seems to me this is not entirely unique, the concept early on of establishing reservations to which a number of tribes or bands were sent. It's a little different, I guess, in that Quinaults themselves are a recognized tribe, where, in the case, as I understand it, of the Tulalip Reservation, there are a number of tribes who came together but there was no Tulalip Indian tribe in and of itself.

Mr. **Whittlesey**. Right.

Senator Evans. It was an artificial conglomeration.

With the nature of reservations, who shares in the benefits, such as they are, of those reservations, just those who live on the reservation?

Mr. Whittlesey. No, Mr. Chairman. All of the people for whom the reservation was created, whether or not they reside within that reservation, and whether or not they are nonresident owners of allotments on that reservation. And in that respect, I might add that, as my prepared comments reflect, we have done some—we are working on an identification of the ownership of this reservation for our litigation. And, at the present time, if the trends hold, over 60 percent of the allotted lands within this reservation is owned by Chinooks, Cowlitz, and Chehalis Indians, not Quinault Indians. So, who does this reservation benefit? I would submit it is for all of those people who are landowners within the reservation.

Senator Evans. You're talking about the allotted. How about the unallotted lands?

Mr. Whittlesey. The unallotted lands, the only unallotted lands I'm aware of, Mr. Chairman, are the fee patented parcels, which are out of Indian ownership. I'm unaware of the original reservation of any unallotted parcels. Now, there are some parcels that the Quinault Tribe has purchased. One was purchased in 1959 through an Act of Congress in exchange for a portion of its Indian Claims Commission award, and I have the citation for that statute.

Similarly, in 1962, a parcel was purchased by the tribe for a portion of its Indian Claims Commission award. But I think, other than that, the unallotted—I think it's a fully allotted reservation in terms of Indian ownership.

Senator Evans. Are you suggesting that those two cases you mentioned are on behalf of the Quinault Tribe or the eight tribes that are——

Mr. Whittlesey. Oh, in that instance, it was very clear and very—in those two instances, clear and carefully crafted, that each of the Indian tribes had at least an entitlement to litigate their land claim in front of the Indian Claims Commission. And, indeed, the tribes that I represent here today each did so.

The Quinaults similarly litigated their own Indian land claim before the Claims Commission. In 1959 and 1962, in return for a portion of the undisbursed Claims Commission award to the Quinault Tribe for the taking of Quinault land, the Quinaults purchased parcels of land. But those were taken out of the Quinault Claims Commission award and not the awards of other tribes. Entirely appropriate for them to have done so.

Senator Evans. Your clients, one is an individual person. The other three are tribes. The first confederated tribes of the Chehalis Reservation, how many elements are there to those confederated tribes?

Mr. Whittlesey. Frankly, I only know of one, and that's the Chehalis Tribe. I think the confederated—

Senator Evans. Why would it be called the confederated tribes?

Mr. Whittlesey. There probably are some non-Chehalis confederated for the purpose of the Indian Reorganization Act at the small Chehalis Reservation in Oakville. I simply am not familiar with where those elements come from.

Senator EVANS. Now, there was a reservation established, presumably, then for the Chehalis Tribe at that Chehalis Reservation?

Mr. WHITTLESEY. A small reservation, which is primarily a residential reservation in the Chehalis aboriginal area.

Senator EVANS. You are suggesting that they have rights not only exclusively to that reservation, but some share of the Quinault Reservation?

Mr. WHITTLESEY. Not only suggesting it. It was adjudicated in 1931 in the *Halbert* case. And I might add, Mr. Chairman, as a corollary to that, in the *Williams* v. *Clark* case, decided in 1984, in which I did participate as an amicus counsel for the Chinook Tribe, the argument was made that, because the Quillehute Tribe had a small reservation at La Push, they had no tribal entitlements, no tribal rights at the Quinault Reservation. That was roundly rejected by the Ninth Circuit, and, in fact, as the Chairman may well know from reading the *Williams* v. *Clark* decision, without attempting to define them, the Ninth Circuit did say there are clearly rights at that reservation. A very analogous situation.

Senator EVANS. Do you—the second is the Chinook Indian Tribe of Chinook, Washington. That tribe is not federally recognized——

Mr. WHITTLESEY. That's correct.

Senator EVANS [continuing]. Currently.

By not being federally recognized, do you claim that they have any particular claim to the Quinault Reservation or rights of the Quinault Reservation?

Mr. WHITTLESEY. Absolutely. First, again, Mr. Chairman, it was adjudicated in Halbert, and they weren't federally recognized in 1931. More importantly, in 1981, in the Wahkiakum fishing case, it was specifically determined that Chinook Indians had tribal rights to fish as a result of the post-treaty affiliation at Quinault determined in Halbert, to exercise tribal rights to fish, notwithstanding the lack of federal recognition.

So again, I would submit that it is not only clear, it's adjudicated.

Senator EVANS. Adjudicated only for fish?

Mr. WHITTLESEY. I believe the Ninth Circuit—I didn't review Wahkiakum prior to coming here today, but I believe they do find a post-treaty affiliation for all purposes. I could——

Senator EVANS. Is it the same circumstance for the Cowlitz Tribe?

Mr. WHITTLESEY. The same would apply to the Cowlitz. Cowlitz was a party to the Wahkiakum case. However, of the three pending cases, the Wahkiakum being one of three cases, the other two were subjugated to the determinations in Wahkiakum. Cowlitz did not pursue its claim in that litigation. But it's analogous, the facts are almost identical.

Senator EVANS. It is my understanding that the Quinault Tribe, or the Quinault Indian Nation grants enrollment to any person who is one-quarter Chehalis, or Chinook, or Cowlitz ancestry, who is not enrolled in another recognized tribe.

Doesn't that, in itself, provide the mechanism for sharing in whatever benefits there are to government of the Quinault Reservation?

Mr. WHITTLESEY. I think there are three points that I would like to make in response to that inquiry.

First, I believe what the constitution says, at least the last time I read it, and I know Mr. De La Cruz can correct me if I'm wrong. I think what it says is these Indians with quarter-blood are eligible to seek enrollment, an ultimate determination to be made by the Quinault Tribe.

Second, this is a constitution being imposed by the Quinault Tribe upon the reservation, was written by the Quinault Tribe. It's not approved by the BIA, and it was not written by a combination of tribes for whom the reservation was created. I think that's important.

And the third point is, even if the constitution had been adopted—well, the third point is that, in order to enroll in Quinault, it means these Indians will have to give up their identification, as the case of my clients, enrolled Chehalis Indians, federally recognized tribe, or Cowlitz Indians, or Chinook Indians not enrolled, or to go further, enrolled Hohs, enrolled Quileutes, or enrolled Makahs. I think that's unfair and I don't think it's called for under the federal determinations that have been made in court.

Senator **Evans**. Do you know how the Cowlitz and the Chinook groups that you represent determine their membership?

Mr. **Whittlesey**. Yes, sir; I do.

Senator **Evans**. What share of blood is required, or is that a requirement?

Mr. **Whittlesey**. There is a blood quantum requirement at Cowlitz. I believe it is a—I'm sorry, I can get that information. I don't want to misspeak. I don't believe there's a blood quantum requirement at Chinook. In any event, there is a clear requirement that they be able to trace to the McChesney rolls and the Roblin rolls of 1912, 1914, and 1919, direct ancestry. And those are BIA rolls that were determined for the purposes of Indian, I think in one case a payment roll to the Chinook Indians, and the Roblin rolls were both payment rolls and Indian determination rolls.

Senator **Evans**. Well, if you could supply for the record whatever those requirements are, it would be helpful.

Mr. **Whittlesey**. Certainly. I can have that this afternoon.

[Requested information may be found in Mr. Whittlesey's prepared statement which appears in appendix.]

Senator **Evans**. Do you know what the nature is of government in the Cowlitz and Chinook groups, how many in each of those groups attend general council meetings? Do they have general council meetings, these groups? How many vote in any of the group elections, if they have elections?

Mr. **Whittlesey**. Oh, I certainly have that information available. That's all on file with the Bureau of Indian Affairs. But in the case of, for instance, Cowlitz, the annual election, which is held at the Grange Hall in Cowlitz Prairie, is attended by hundreds of people annually. They have periodic meetings. They have a governing body that's elected annually, which is, I think, a group of about 15 people, and it is virtually unanimously attended by every member of that body.

The Chinooks similarly have an annual meeting, I think in August, I think the Cowlitz is, too. They have an elected governing body of six. They meet at least monthly. In terms of the number that attend the Chinook annual meeting, it's a substantial number, perhaps less than a hundred, but I think it's a substantial number.

Again, this is all information on file with the Bureau of Indian Affairs in the Federal Acknowledgment Petitions, and I certainly can answer those questions, if the committee would so like.

Senator EVANS. All right.

Mr. WHITTLESEY. And so, too, with the Chehalis Tribe, federally recognized. Again, I could furnish numbers as to the number of people that are in those meetings, if you would like.

Senator EVANS. All right.

[Requested information may be found in Mr. Whittlesey's prepared statement which appears in appendix.]

Senator EVANS. It is my understanding that the Chehalis and the Shoalwater Bay Reservations were established for Chinook, Cowlitz, and Chehalis members who declined to relocate to the Quinault Reservation. Is that essentially correct?

Mr. WHITTLESEY. Well, in the first place, I don't—I'm trying to remember the language. I've read that language. I do know that a substantial population at Shoalwater Bay is of Chinook descent. That is, of course, an IRA tribe, much like Muckelshoots and Tulalip, which is no aboriginal entity from which they've sprung. But, as in both of those cases, those are small reservations, and again, far from, in the case of Chinook, far from the Columbia River which was the aboriginal fishing and traditional fishing activity of those people.

Senator EVANS. Would your clients have similar claims to the ones you're making on the Quinault Reservation to the Chehalis and Shoalwater Bay Reservations?

Mr. WHITTLESEY. No, Mr. Chairman, they would not.

Senator EVANS. Why not?

Mr. WHITTLESEY. Those two reservations, which are executive order reservations, were determined for a specific purpose. In the case of Quinault, there was a long history, not just going back to the Executive Order of 1873, but through, when the Dawes Act was unsuccessful in opening the allotment process up to the nonresident Indians, a specific allotment statute passed in 1911, it led to the *U.S.* v. *Payne* litigation in 1924, in which Quileute Indians had to go to the Supreme Court to win their right to gain an allotment at the Quinault Reservation, which, in turn, led to the Halbert litigation in 1931.

There's a long history here. It's a different situation. That reservation was specifically created for eight tribal groups, and I think that's the difference between that reservation and the executive order reservations at Chehalis and Shoalwater Bay.

Senator EVANS. Is it part, maybe not of this particular bill but of the claims that you are making, that the management of the government of the Quinault Reservation, those who vote, for instance, for the government of the Quinault Reservation should be open to all the members of all eight of those tribes whether or not they live on the reservation, or have any enrollment in the Quinault Tribe at all, Quinault Nation?

Mr. WHITTLESEY. That question presents a problem for me in this respect. We are going to litigate the governing body question, and one of the difficult issues that will arise, as indeed it did in the

Boldt case, the fishing case for the Puget Sound, is crafting relief once the legal determinations have been made. It is my personal belief, and that's all I can say in this regard, that there probably is going to have to be a governing body established as a matter of federal law, probably as a result of court decree, which does reflect the concerns and interests and, indeed, participation of all of those tribes for whom the reservation was created and, indeed, for all those people who are landowners within that reservation. But the form of that relief is a long way away, and I just can't possibly predict what it would look like. Perhaps even an IRA constitution under—I mean corporation under the 1934 act. Again, I just—it would be hard to speculate what the courts would do.

Senator EVANS. What you are suggesting, then, that the Bureau of Indian Affairs and others over the years have been in error in giving the Quinault Indian Nation exclusive political and territorial jurisdiction over that reservation?

Mr. WHITTLESEY. The Ninth Circuit said exactly that in so many words. It was specifically argued in the *Williams* v. *Clark* case by the Quinaults and by the Federal Government, representing the BIA, that the Quinaults were the governing body of that reservation and they had exclusive authority over that reservation, and the Ninth Circuit said that is not so. For the purposes of the litigation before it, they said, at least the Quileutes have some authority within that jurisdiction. And it's to obtain the broader and, we think, more important and more decisive interpretation that this litigation is being readied for filing.

Senator EVANS. And what were the specific purposes in that court suit that they had some involvement or some powers on the reservation?

Mr. WHITTLESEY. Well, it arose under the 1934 act, Mr. Chairman. A gentleman had died, by the name of Joseph Willessi. He was a Quileute Indian. One of his Quinault heirs, a man named Leo Williams, who was a resident of the—I am sorry—one of his Quileute heirs, Leo Williams, a resident of the Quileute Reservation, was deeded, by will, but from his uncle all of the Willessi assets. The Willessi estate was worth a lot of money. I think ultimate disposition was in the millions of dollars.

The argument was made that, under the 1934 Act, because Leo Williams was a Quileute and not a Quinault, he was not an eligible to the Willessi estate which included Quinault lands. That argument was taken to the Ninth Circuit, and the court determined, for the purposes of that case, the Quileute Tribe did have jurisdiction within the Quinault Reservation, thus freeing Leo Williams as a member of a tribe with jurisdiction at the reservation to take this land by descent.

Senator EVANS. Thank you. I think we may have some other questions for the record. This is a complex issue, and after listening to all the testimony, we may well be back to you for further questioning.

Mr. WHITTLESEY. OK. And one last comment, Mr. Chairman. I do offer, in the end of my prepared comments, one thought, and perhaps it's the perfect answer, there's no such thing as a perfect answer. Perhaps if the bill were amended to transfer the land to the Secretary in trust for the Quinault Indian Reservation, it would protect all the rights of all of the parties. If the Quinault Nation is correct in its assertion that it's the governing body of the reservation, then indeed it will be the governing body of that land. If we are correct in our assertion, then indeed it will be part of the communal property to be administered under what ultimately is determined to be the governing body.

Thank you, Mr. Chairman.

Senator Evans. Wouldn't that be the case no matter what is done?

Mr. Whittlesey. On, no, no. If this land is deeded to the Quinault Indian Nation in trust for the Indian Nation, that is Quinault tribal land and not necessarily subject in the same way other than the overall reservation governance. This is returning to the tribe lands taken from the seven. I think there's a real distinction there.

Senator Evans. All right. Thank you very much.

Mr. Whittlesey. Thank you.

Senator Evans. Our fourth witness is the Honorable Joe De La Cruz, Chairman of the Quinault Indian Nation.

Welcome to the committee once again.

STATEMENT OF HON. JOE DeLaCRUZ, PRESIDENT, QUINAULT INDIAN NATION, TAHOLAH, WA, ACCOMPANIED BY JIM JACKSON, CHIEF; RICHARD REICH, RESERVATION ATTORNEY

Mr. DeLaCruz. Mr. Chairman, I'm Joe DeLaCruz. I am the President of the Quinault Indian Nation, and rightfully representing the Indians of the Quinault Indian Reservation.

I, myself, am a descendant Chinook, Chehalis, Cowlitz, Quinault, Squamish, and Skokomish.

Senator Evans. Does that give you six votes?

Mr. DeLaCruz. That's right.

And within our Quinault rolls we have 1,000 people of Chinook descent, 900-some of Chehalis descent, and that's out of a sample of 1700. I could go on.

But before I go into my testimony, Mr. Chairman, I have with me our Chief, Jim Jackson, my predecessor for 12 years. His father was his predecessor. And we've been dealing with this question for going on five generations. And before I go into my remarks, I'd to, if it's permissible, have Jim Jackson, our Chief, make some comments.

Senator Evans. Please. I would be most pleased to hear from the Chief.

Mr. Jackson. Thank you.

My name is Jim Jackson. I am the hereditary chief of the Quinault Tribe. My great grandfather was the first signature on the first cross on the Quinault Treaty. My grandmother, his daughter, was the strong tribal leader, and, as was my father, who was the tribal chairman, tribal president, for about 25 years.

During this time they kept me fully and partially informed on things that were going on as far as tribal affairs go. It is true that the *Halbert* case allotted the Quinault Indian Reservation with other tribes, and up until 1934, the Indian Reorganization Act stopped all allotments.

In the early and middle 1940's the tribe filed suit in the Court of Claims for the return of the North Boundary lands. The court agreed that the survey was wrong and that the lands rightfully should have been on the reservation. There was a question, however, in the minds of the court judges that the Quinault Tribe was a rightful one to bring the suit. This was cleared by an Act of Congress which stated that the Quinault Tribe was the proper people to bring the suit. And back to the Court of Claims they went, in the early 1950's. The court agreed that the tribe was the rightful people and put a price on it, offset the price with everything that the government had ever done on the Quinault Reservation, including the schools, the wood for the school, the repairs, the medical supplies, bandages, and also what is known in Indian country as smallpox blankets. All of these were charged up to the judgment.

After this, 1951 I believe it was, the Quinault General Council passed a resolution stating that we do not want to be paid for that land. It is not for sale, and we want our land back.

So this brings us up to the time of my father's death in the 1960's, after which I was eligible to be elected as a governing body. After serving two years as vice president, I was elected to be President of the Quinault Tribe. During this period we were recognized as being the speakers for the Quinault people and the Quinault Tribe, including some meetings where we discussed our problems with the then Governor of the State of Washington, the Honorable Daniel J. Evans, which sometimes we were successful, sometimes not.

After having some health problems in the late 1960's, I had to resign as President of the Quinault Tribe. The balance of the term was served out by the then Vice President of the Quinault Tribe, Helen Sanders Mitchell. At the next election, Joe DeLaCruz was elected President of the Quinault Tribe by an overwhelming majority and has served ever since.

During the 1970's, Joe, among other things, amended the Quinault constitution to provide for some different rules for enrollment. I am sure that he will dig into this later. In the late 1960's we started with a fisheries program on a small scale, and with a forestry program on a small scale. Joe, later in the 1970's and 1980's enlarged, really made a lot bigger both the fisheries and the forestry programs in the planting and the Forestry Practices Act, the TFW, which is now recognized throughout forestry country as a model to be followed by not only forest industries, private industry, but governments as well.

The Quinault people, Quinault Tribe, Quinault country has lots of things going for them. We have some natural resources that we feel are very important. Our fisheries, our wildlife, clean beaches, free-flowing water, forestry, all of these things not only are of benefit to ourselves, but are of also benefit to the surrounding community and to even as far as the Pacific rim countries. The forestry program going on now, the tree planting, and the controlled burns, and the other things that are being carried by our people and by our governing body, these people will never see these trees harvested. So that when these trees are harvested, the benefits of them will be felt by our grandchildren and by theirs, and this is why we feel that it is very important for our Quinault country to be a better place for the future generations of our people.

Thank you.

Senator EVANS. Thank you very much.

Joe? Proceed.

Mr. DELACRUZ. Thank you, Mr. Chairman.

I have a prepared statement here that lays out the history of why the tribe supports this legislation in S. 2752, and I want to submit this statement for the record. And I know time in these hearings is very important. I also want to submit for the record some of the amendments that we felt should be looked at as far as this legislation go, and I want to submit for the record the history of the Quinault Reservation and all the legal questions that were raised by the previous witness, the dates and times throughout history that they were answered by the United States Government or one of the administrations of the United States Government. And there is other documents in relationship to this property.

Also, for the record I'm submitting a copy of the Amended Constitution of the Quinault Indian Nation that takes in consideration the other members of other tribes that were part of the original 1922 bylaws of the Quinault Nation that recognized that the reservation was there for Quinault, Quileute, Hoh, Quits Chehalis, Cowlitz, Chinook, and of a quarter descent.

When I was the general manager in 1967, I worked for the enrollment committee, at the time Jim was talking about, when Helen Sanders or Helen Mitchell at that time as I knew her, was the vice president, and I had moved the council that day conglomerate bloods of people of those descendancies for our base roll. And that expanded roll basically is what the Quinault Nation, the people that make up the Quinault Nation are.

And, as I said, of the sample I was taking of 1,700 and some enrolled members, 734 of them were of Quinault descent, and 335 of Hoh descent, and 491 Quit descent, 995 Chehalis descent, 1,084 Chinook descent. And again, from the 2,300 enrolled members from research, yes, the majority of our membership that met the blood quantum enrollment requirements are Chinook-Chehalis descent. And those families and extended families own not only many allotments but interests in several allotments on Quinault. They own interest in property at Chehalis, Nisqually. The only piece of trust property in Cowlitz territory is owned by one of my uncles. And other reservations. But, that again is the sad legacy of the general allotment act.

We went into trying to look at a solution that's been looked at for many years. The land tenure problem as created by the Dawes Act, as we testified to a Senate Indian Affairs Committee, out of that came at least an idea that maybe from this acreage we could begin to correct some of the things that history has not been able to correct, with the trend of heirship and land tenure in Quinault, the direction that it had been going for the past 50 years, and the complex management problems that not only the tribe has had to deal with but the United States and the Bureau of Indian Affairs, the horrendous costs that at some point in time somebody is going to have to reach a conclusion that nobody can afford to manage property that's fractionated to the extent that these properties are fractionated.

Some of our research, at least the best information we could find, the Bureau says it costs about $50 per interest to manage these lands and looking at the number of properties in heirships, they're talking on their basic estimate about a million dollars a year. And this legislation and what we would realize under the type management that we worked out, would help correct this problem. We spent a lot of time with the local U.S. forester, Mr. Henshaw, with local government, the county commissioners of Grays Harbor, Jefferson County. We spent a lot of time with Grays Harbor Port Commission, small mill owners, everyone we could think of to try to work out an amenable solution for this.

Quinault people and Quinault Tribes have attempted to develop peaceful solutions to these things. And I'm sad to hear about a court case that's gonna happen because, as we look at the history of the Pacific Northwest, and we're involved with the 20 Bolt case area tribes, the majority of the Cowlitz people that are of Indian blood are over in the Yakima Reservation. There's 14 bands on Yakima, there's 14 on Colville, there's 12 in Warm Springs, and the U.S. policy forced people to be placed on various reservations. And what we find is that there are people today that don't meet various citizenship requirements that tribes have established. So now they're out to trying to establish their own tribes or reestablish tribes. And I would like to have, time permitting, Rich Reich respond to some of the questions, the legal questions that have been raised in this, although we have written responses to them also.

Rich is one of the tribal attorneys that has worked with us early on with the Bolt decision and these other cases that have come up, and there's clearly a different interpretation from the tribal perspective, from the United States perspective, not only of this administration but of the past administration.

The Indians of the Quinault Reservation petitioned the United States for an IRA election under the last administration, and the Secretary of Interior and the Under Secretary of Indian Affairs and their solicitors denied their request. When the present administration came in again, the petitioners thought Secretary James Watt would turn around the previous Secretary's decision. And Secretary Watt, the solicitors looked at that petition and again affirmed that, denied their petition that the Quinault Tribal Government is the government of the Quinault Reservation.

That question has been answered over and over and over again from way back in the 1930's, and it keeps coming up, and I don't think any court is ever gonna resolve that question. It's been before courts time and time again.

Thank you.

Senator EVANS. Thank you. It would be help to have, and, as you say, written responses to each of the assertions made, so we have that for the record.

Mr. DELACRUZ. I have those. Mr. Chairman, there might be some things that need further clarification from the written responses to those questions, and if there are, I would like to have Rich Reich, if there are any additional ones that don't have any written response.

Senator EVANS. Surely. If you have some brief comments right now, and then I may have some questions that will be more specific.

Mr. REICH. I appreciate this opportunity.

The material that was prepared details the administration and Congress' recognition of the Quinault Indian Nation as the governing tribe of the reservation. It was prepared without the benefit of Mr. Whittlesey's testimony, so it does not respond point by point to each of the claims that Mr. Whittlesey has made on behalf of his clients, but it does respond to the basic claim that the Quinault Indian Nation is not representative of the Indians having an interest in the reservation.

I would like to respond to some of those claims in Mr. Whittlesey's testimony now.

The first thing that I'd like to point out and that I think that the committee has to understand in looking at these questions is that the Quinault Indian Nation, as Chairman DeLaCruz indicated, does not just represent descendants of the aboriginal Quinault tribe. It represents, as members, who are descendants of each of the groups who are allotted on the reservation.

What happened historically, when the Quinault Indian Nation was enlarged in 1873, was that the United States hoped to encourage Indians from a number of groups to relocate on the reservation. But for the most part, as tribal entities, they refused to move from their ancestral homes, which was very understandable.

The Chehalis Tribe had had—excuse me—the Chehalis, Cowlitz, and Chinook, who had refused to sign a treaty which would have required them to move to the Quinault reservation, had a reservation established for them in 1864 on the Chehalis River near Oakville. That's the Chehalis Reservation. Some of the Chinook and lower Chehalis had a reservation established for them at Shoalwater Bay. Later the Quileutes and the Hohs had reservations established at the mouths of the Quileute and Hoh Rivers. Each because they refused to relocate to the Quinault Reservation and consolidate with the Quinault Tribe.

But what happened over the years, and as a part of the federal allotment policy, was that many individual Indians from these groups did move to the Quinault Reservation, became a part of the Quinault community, and amalgamated and confederated into what is today the Quinault Nation, as the breakdown of the tribal roll has shown.

What the Quinault Indian Nation has done, in light of that history, we believe is a fair and appropriate response to the history of the Quinault Reservation. It's adopted, through its 1975 amendments to the constitution, enrollment requirements which allow any person of Cowlitz, Chehalis, Chinook, Puyallup, Hoh, Quit, or Quinault ancestry, of a quarter-blood or more, any combination of those heritages, to enroll as a matter of right if they are not presently a member of some other recognized tribe.

That enrollment requirement is fully consistent with federal policy over the years, which has used, in various pieces of legislation, quarter-blood as an appropriate blood heritage requirement for Indian status, and which has, over the years, prohibited, to the extent the administration has been able to, dual enrollment or double-dipping by allowing people to be members of two tribes at the same time. The tribe's enrollment requirement under the 1975 constitution I think is fully consistent with federal policy.

Mr. Whittlesey indicated that the constitution of the Quinault Indian Nation has not been approved, the 1975 amendments. And that's true. But the Interior Department has noted that no approval of that constitution is required by the United States for it to be effective as the governing document for the Quinault Indian people.

It is also worth noting that the areas in which the United States has indicated some reservations with respect to the constitution have nothing at all to do with the enrollment requirements or the adequacy of the tribe's representation of all of the Indians' concern. They have do with questions such as the claims, the tribe's claim of jurisdiction to the territorial limit seaward of the United States, which now would be out 200 miles. The Interior Department has some concerns about that. The concerns are those sorts of concerns, not enrollment concerns.

Looking, for example, at the Halbert case, we have a very different view of that case and the subsequent cases than Mr. Whittlesey and his clients. In our view, and we believe the view of the administration, which it has expressed over the years and expressed in some of the materials that Mr. DeLaCruz has provided for the record, the case recognizes the rights of individual Indians of the various descents that we're concerned about, to take allotments on the Quinault Reservation. It does not recognize broad tribal rights of the kinds that Mr. Whittlesey has alleged.

And, to put this in somewhat perspective, it's important to note that, if one looks at the original unreported District Court decision in Halbert, the District Court found that there was no existing Chinook Tribe at that time. What it said, what it found was, it would have to go out and decide which individuals of Chinook descent were entitled to take an allotment on the Quinault Reservation, because there was no Chinook tribal organization at the time. The Chinooks had been, for the most part, the court found, assimilated into other tribes and assimilated, the remainder of them assimilated into white society. The later decision of the Supreme Court, which affirmed that, did nothing to change the District Court's finding that the Chinooks no longer existed as a separate and independent tribe.

The 1914 act Mr. Whittlesey refers to does, in fact, provide compensation to what it calls Indians of the Quinault Reservation for the taking of a lighthouse reserve. But, in 1962, Congress restored that lighthouse reserve land to the Quinault Indian Tribe.

I think that that shows clearly that Congress saw no difference between Indians of the Quinault Reservation and the Quinault Indian Tribe, just as the passage of the 1947 act, and particularly the Secretary of the Interior's representations to Congress in support of that passage of that act, specifically points to the fact and recognized the confederated nature of the Quinault Indian Nation as representation of Indians of various tribal ethnicity.

Senator **Evans**. Let me at this point ask a couple of questions. As you went along, do I understand correctly that anyone of quarter descent in any one of those other tribes, as a matter of right has membership in the Quinault Tribe, it's not a matter of choice by a Quinault governing council, but is a matter of right?

Mr. REICH. As a matter of right, they must apply for enrollment, of course, but they have an absolute to enroll if they are quarter-blood, and that would include a person, for example, of eighth-Cowlitz, eighth-Chinook blood who would, in the aggregate have a quarter of those two bloods and would be entitled, as a matter of right, to enroll.

Senator EVANS. Your assertion that none of the other tribes, at the time the treaty was signed which established the Quinault Reservation, that none of the other tribes involved signed the treaty?

Mr. REICH. No; that's not my assertion, Senator. The Quileute, the Hoh, the Quits which are now clearly a part of the Quinault Indian Nation, and the Quinaults signed the treaty.

Senator EVANS. Some did, some didn't.

Mr. REICH. The Chehalis, the Cowlitz, and the Chinooks refused to sign the treaty. That's well documented.

Mr. EVANS. But each of those other tribes, at some subsequent time, for those who chose not to move to the Quinault Reservation, were awarded some kind of a small reservation on their own behalf?

Mr. REICH. That's correct. And it's important to recognize that those tribes, those tribes benefited because, not because they have a tribal interest in the Quinault Reservation, but because their members, as individuals, have a right and had a right before 1934 to take and hold allotments on the Quinault Reservation. And their tribal land bases were, to a large extent, even though they're small, preserved because their members took land at Quinault, and Quinault fully recognizes the right of individuals of those tribal backgrounds to hold land on the Quinault Indian Reservation.

The dispute here is over what the question of claims by other tribal organizations, not by ~~individual~~ Indians to hold land.

Senator EVANS. What about other individual Indians who are of descent, maybe of descent strong enough to qualify by a matter of right as members of the Quinault Indian Nation, but for some of it, for whatever reasons, chose, choose not to. They retain their identity as Chinook, or Hoh, or some other tribe, even though they may have the blood necessary by matter of right to be part of the Quinault reservation. Would you suggest that any of the benefits that flow, for instance, from this land transaction, if it were to be consummated, and if the land were to then return to Quinault Indian Nation ownership, that revenues and benefits that accrue from that should go for those who are members of the Quinault Indian Tribe or those individuals, not organizations, individuals who might have sufficient blood but who are not enrolled members of the tribe?

Mr. DELACRUZ. Basically, Mr. Chairman, the history of Quinault, as I know it, and all the cases that were filed, the people that live on Quinault at Taholah that are descendants of all these tribes that have historically been the government, have been the one that has pursued all these claims. And out of whatever revenues they had, they paid for them. And I believe that our government believes that anything that comes back to that tribe just as any of our regulations or laws apply to our members, our citizens of the Quinault Indian Nation.

Our tribe, again by federal policy, don't recognize dual enrollment. It's kind of ironic because we have—and its kind of not only a pattern within Quinault—we have families, when you asked about the treaty, next Sunday we're commensurating [sic] the treaty negotiations that were held at Ki-sol-mish, Cosmopolis as you know it today. That was the long house of my great-great grandfather, and it was his father that was the Lower Chehalis Chief that got the treaties torn up and they didn't sign.

So, you know, it's 33 years later and we're having a commensuration with the City of Cosmopolis for the Washington State Centennial. It's kind of ironic because we have members that are enrolled Quinault. We've got some of the same families, brothers and sisters, enrolled on at Shoalwater, or the same at Chehalis. At the Chehalis tribe, the chairman, some of his family, the brothers are enrolled at Quinault, some are enrolled, or their nieces and nephews. And it's by choice where those people chose to go. And I guess the right goes with where they enroll, as it does with most tribes throughout the Nation. There are no tribes that I know of that recognize dual enrollment.

And when I look at the history of our descendancies, which we've had to do with the rolls of Quinault, the executive order even went one step further besides the seven tribes that are mentioned, and it said all fish-eating tribes. And when you look at who's allotted there, you find Indians from throughout the Pacific Coast. There's Yakimas that happened to be over there got allotted. There's Makahs, Lummees, Squaxin, and, you know, even today some of the descendants of those people are part of the Quinault Indian Tribe that chose to stay there.

My family and the families of Lower Grays Harbor on the north side of the harbor, after treaty times, were families that did move to Quinault, and they were accepted there. They were Lower Chehalis people, majority blood, but they were also Chinook.

Senator EVANS. Have the Cowlitz or Chehalis or other groups, as an organization, ever had any role in the management or governance of the Quinault Reservation itself?

Mr. DELACRUZ. No. In fact, at least between tribal councils, until some of these disputes arise, and most times we work very closely intergovernmentally between tribal governments and tribal councils.

Senator EVANS. But, as far as governance on the reservation itself they have no——

Mr. DELACRUZ. Governance on the reservation, in areas of health and a lot of other areas. And we've had that working relationship until the fisheries dispute come up, and it was a probate judge that first came up with this deal that now they are arguing that other tribes have the same Quinault government, and basically it was just over an individual allotment which really wasn't a question at that point of time because we recognized that also.

Senator EVANS. Do you, as the governing council of the Quinault Indian Nation, assert any jurisdiction or any claims over whatever assets there might be held by the Chinooks or any of the other constituent tribes through their own reservations?

Mr. DeLaCruz. No, Mr. Chairman; we don't. But, you know, with the type of threats that we keep having to respond to as a Quinault Nation, you know, sometimes you wonder if you want to stay peaceful. They get funding as governments for their reservations, and I think Chehalis has 300 or 400 members. We've got 900 and some Chehalis descents though. I guess I should file for the services we're providing the Chehalis people on Quinault, you know. The game is vice versa as far as I'm concerned. But we've sat down with their governments and worked them out. I talked to the chairman of the Chehalis Tribe this morning, and he kind of told me how that came before their council from the Housing Commission, their Housing Commission, and they supported a letter, but they didn't really know what was being testified to.

Senator Evans. I think we are at a point where we will have to absorb the various—you know, we've got two different things. We've got all the legal claims and counterclaims, and we've got the broader question of what's right in terms of return of the land. That may be the easier question to settle off, you know, at the beginning. It seems to me that there is a quite clear responsibility for rectifying an error which was made the better part of a century ago. It looks as though, however, the question of precisely how we do it and what assurances we make is going to be a little touchier.

We will want to look at each of these presentations. I do understand that you also have some recommendations for amendment, and also have a recognition which is in the legislation itself, and which I understand you support as to management and the way in which those lands would be managed to be compatible with, you know, with the kind of timber harvest and——

Mr. DeLaCruz. Yes, Mr. Chairman; we do. We spend a lot of time with the Forest Service, Park Service, and various entities in Quinault. And we have a copy we're submitting for the record. Our own Forestry Practices Act even goes beyond what most land users or forestry users are doing as far as timber harvest, and the things that happen out in Washington State, our timber, fish, and wildlife, we've agreed that we'd apply and even go to that.

One thing I did forget. We had a corrected map of what the U.S. Forest Service local ranger and the tribe worked out as far as the in-lieu lands. We had some question there because of ITT Rainier's property, and that map, that corrected map is here also.

[Prepared statement of Mr. DeLaCruz, attachments thereto, and the map referred to appear in appendix.]

Senator Evans. We may well have other questions for the record to make sure we clear up any ambiguities that remain. We are at a time in the session where time is limited. And we still hope to see what kind of action might be taken on this legislation.

I would like to add to the record letters from the Mayr Brothers Logging Company, the Northwest Independent Forest Manufacturers, Grays Harbor County, the Port of Grays Harbor, and an editorial in the Seattle Times.

[Items referred to appear in appendix.]

Senator Evans. With that, I believe we have reached the end of the listed testimony. It is obviously a difficult but not impossible task for us to conclude work on this, I think, important piece of legislation yet before the end of this Congress. It is certainly my hope we will be able to do so and do so in a manner that is as responsible as possible, taking into account the testimony we have heard here today.

Thank you very much, all of you, for your testimony.

This hearing is adjourned.

[Whereupon, at 3:30 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF
JAMES C. OVERBAY, DEPUTY CHIEF
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Thank you for the opportunity to testify on S. 2752, a bill "To declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes."

The Department of Agriculture opposes enactment of S. 2752 for the reasons discussed below.

If enacted, S. 2752 would transfer about 10,093 acres of the Olympic National Forest to the Department of the Interior to be held in trust for the Quinault Nation as a part of the Quinault Indian Reservation. An additional 6,900 acres of the Olympic National Forest would be transferred to the Quinault Nation in lieu of a transfer of certain other lands within the area of the original claim. These other lands are currently owned or under the jurisdiction of the Olympic National Park, the State of Washington, and private landowners.

A brief summary of the history of the Quinault claim is helpful in discussing the legislation. Following passage of the Indian Claims Act of 1925, the Quinault Nation filed a claim for the lands along the north boundary of the reservation. The claim for these excluded lands was adjudicated in the Court of Claims in 1945 and 1951 (Quinault Tribe of Indians v. United States, 102 Ct. Cl. 822 (1945) and 118 Ct. Cl. 220 (1951)). In the final adjudication, the Court determined that the boundary had been erroneously surveyed, and lands were excluded from the reservation. The court found that although the Tribe was entitled to a monetary award of damages from the United States for these excluded lands, the damages due were offset by payments and gratuities provided by the United States to the Quinault Tribe.

We have a number of concerns about S. 2752, and about the larger public policy questions which it raises.

Throughout this century, the Federal Government has attempted to settle Native American claims resulting from the non-Indian settlement and development of the United States and subsequent taking of Indian lands. The attempts have been only partially successful. Various jurisdictional statutes have provided for legal remedies, principally monetary damages. The Indian Claims Commission Act of 1946 was the broadest attempt to provide a mechanism for resolving legal and equitable claims. By the time the Commission expired in 1977, over 491 claims were docketed and awards in excess of $707 million were made in 233 cases. (Indian Claims Commission, 1977 Annual Report, Appendix 1).

We strongly oppose the transfer of 6,900 acres of National Forest land to compensate for disputed lands now owned or under the jurisdiction of the Olympic National Park, the State of Washington, and private landowners. The National Forests are not a reservoir of land from which all claims are to be resolved. In 1897, President Cleveland reserved the lands which became the Olympic National Forest for very specific national purposes. These purposes are no less important than those of National Park, State, or private lands. Furthermore, the transfer of lands under S. 2752 would restrict access to the remaining National Forest lands.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions you may have.

Statement by Polly Dyer,
President, Olympic Park Associates
on Senate Bill 2527, September 12, 1988.

The Olympic Park Associates is pleased to lend its wholehearted support to Senate Bill 2752. This measure will return to the Quinault nation lands which clearly and justly belong to them.

Too often in our history has our government failed to follow through on promises made to sovereign Indian peoples. While citizens of the United States have benefited and prospered by lands ceded to us by their original inhabitants, we have been remiss, time after time, in fulfilling our side of the agreements. It is shocking that at present, less than 4% of the nearly 200,000 acre Quinault Reservation is owned by, or held in trust for the Quinault nation. This bill offers us a chance to correct a wrong inflicted on the Quinault people a century ago. Through it, the Quinault tribe will assume ownership of forest lands still largely intact, with their rich diversity of natural communities that existed before Europeans set foot on Quinault country.

As an organization concerned with the environmental health and natural integrity of the Olympic Peninsula, Olympic Park Associates has held a long-standing interest in the rich forest lands and wildlife habitat of the Quinault valley. A significant portion of the forest service lands affected by this bill contain excellent stands of low-elevation old growth forest. Forests of this type support a host of plant and wildlife populations which include the threatened Northern spotted owl, as well as the endemic Olympic mud minnow, and other sensitive species. Also, an estimated 15% of these lands serve as important winter range for resident populations of Roosevelt elk.

Through active involvement in planning efforts of Olympic National Forest and Olympic National Park, Olympic Park Associates has worked for the preservation and sensitive management of these natural communities. As a result of our efforts, and the efforts of other concerned groups and individuals, a sizable portion of the lands concerned with this bill were allocated to a visual quality management of "retention" and "partial retention" in Olympic National Forest's Land Use Plan for the Quinault Planning Unit. This plan was finalized in 1976, and it is the plan currently directing forest service management of these lands. While this type of management does not preclude timber harvest, it does direct that harvest activities be designed in a visually sensitive way. By limiting the size and extent of timber cutting in these areas to 75% of the full allowable cut, it does provide for the retention of natural stands and the use of lengthened rotations. Both will serve to protect important habitat and migration corridors.

We strongly recommend that language be added to this bill directing that these lands be managed, at a minimum, under existing forest service constraints on timber harvest, and that particular attention be paid toward protecting elk winter range areas and old growth communities. The forest service is currently developing management policy for spotted owl habitat areas and habitat areas for other sensitive species. We also recommend that these directives be included in the bill for any known occurrence of these species within the lands to be exchanged. Such language would be comparable with that under Section 4 of the bill, directing that the exchanged lands shall be administered under the provisions of the Grays Harbor Sustained Yield Unit.

We were unable to discern, from maps we had available, whether any of the forest service lands to be exchanged occurred within the Quinault Research Natural Area. It appeared that they did not. However, we want to go on record as opposing the exchange of any lands that occur within this unit of the national forest.

We are please to see the restriction on the export of unprocessed logs or export-exchange sales included in the legislation, and we are particularly pleased to see that timber sales proceeds will be used for environmental mitigation and purchase from willing sellers of lands within the reservation presently owned by non-tribal members.

Thank you for your attention. We hope our comments will be of use to you in your final deliberations, and we look forward to a prompt passage of this timely measure.

TESTIMONY OF DENNIS J. WHITTLESEY

Legal Counsel to Various Indian Tribes
and Indian Individuals
For Whom the Quinault Indian Reservation
Was Established

In Opposition to S.2752

Before the Senate Select Committee for Indian Affairs
September 12, 1988

My name is Dennis J. Whittlesey. I am a partner in the law firm of Barnett & Alagia, 1000 Thomas Jefferson Street, N. W., Washington, D. C. 20007. My testimony here today is presented on behalf of four individual clients:

1. The Confederated Tribes of the Chehalis Reservation, Chehalis, Washington, an Indian tribe which is federally recognized.
2. The Chinook Indian Tribe of Chinook, Washington, an Indian tribe which is not federally recognized but which currently is petitioning for recognition through the Interior Department's Federal Acknowledgment Project (now formally known as the Branch of Acknowledgment and Research).
3. The Cowlitz Indian Tribe of Tacoma, Washington, an Indian tribe which is not

federally recognized but which currently is petitioning for recognition through the Federal Acknowledgment Project.

4. Helen Sanders (formerly known as Helen Sanders Mitchell), lead plaintiff in the landmark litigation in the United States Claims Court seeking compensation from the United States for decades of mismanagement of the forest at the Quinault Indian Reservation, Mitchell, et al. v. United States.

I want to thank the Committee for allowing me to appear on behalf of these clients, particularly in light of your preference -- which we believe to be proper -- to hear from individuals and not attorneys.

My clients oppose S.2752 for the reason that it proposes to transfer land in trust for the Quinault Indian Tribe which the courts have determined was not taken from the Quinaults, but rather from the eight tribes for which the Quinault Indian Reservation was established.

As this Committee knows, the land at issue represents a restoration to the Reservation of some 15,000 acres deleted from the Reservation 100 years ago through an error in survey. And it should be noted that this land has been the subject of litigation; its improper deletion is adjudicated and the acreage is not in question. However, the

Quinaults apparently would have you believe that it was taken from them and that it accordingly should be returned to them.

The courts have clearly stated that this land was taken from eight tribes. To return land to one would reverse decisions of the United States Supreme Court, the United States Court of Claims and the United States Court of Appeals for the Ninth Circuit. My tribal clients are three of the eight, and Helen Sanders is an enrolled member of the Quinault Tribe who owns allotments within the Reservation.

Attached to this testimony as Exhibit A is a document entitled "History of the Quinault Indian Reservation" which was prepared by me and filed as an exhibit to a brief of the Chinook Indian Tribe in federal litigation directly concerned with the issues which are raised by this legislation. I will not repeat its contents here, but several critical elements cannot be ignored:

- The Supreme Court has found that the Reservation was established for eight tribes, and not just one: Quinault, Quileute, Hoh, Quit (now merged into Quinault), Chehalis, Chinook, Cowlitz and Ozette (now known as Makah). Halbert v. United States, 283 U.S. 753 (1931).

- The Quinaults attempted to sue the United States for the value of the land deleted from the Reservation and were not permitted to litigate the case for the reason that the Reservation was created for the eight tribes and no one could sue on behalf of the others. The Quinaielt Tribe of Indians v. The United States, 102 Ct.Cl. 822 (1945).
- In two recent opinions, the Ninth Circuit has reaffirmed the principles of Halbert and Quinaielt. Williams v. Clark, 742 F.2d 549 (9th Cir. 1984); Wahkiakum Band of Chinook Indians v. Bateman, 655 F.2d 176 (9th Cit. 1981).

I should note further that the Quinault Indian Tribe has never been recognized as having exclusive authority over the Reservation precisely because it is only one of various tribes for which it was established. In this regard, the Quinaults have repeatedly argued that they have been so recognized; the Bureau of Indian Affairs tends to support them in this regard. However, their argument has been rejected by the courts -- most recently in Williams v. Clark.

The issue of who constitutes the governing body of the Quinault Reservation soon will be litigated. I have prepared a lawsuit to be filed within the several weeks in the United States District Court for the Western District of Washington. Among the named plaintiffs will be the Chehalis Tribe, Chinook Tribe, Cowlitz Tribe and individuals who are enrolled members of Quinault, Quileute, Hoh and Makah. This legislation could have a severe impact upon that litigation since it could be construed as a Congressional determination that the Quinault Tribe is the governing body of the Reservation.

My concerns are based upon past Quinault and BIA performance and not just mere speculation.

Subsequent to the 1945 Court of Claims ruling in *Quinaielt*, Congress passed a law permitting the boundary dispute to be litigated by the Quinault Tribe for all eight tribes. The Act of July 24, 1947 (61 Stat. 416), was carefully crafted to permit the Quinaults to represent the other tribes *for the limited purpose* of litigating the boundary case, and its language cannot be construed as going beyond that sole activity. Yet, the Quinaults and the BIA maintain that the 1947 law constituted a Congressional recognition that the Quinaults are the governing body of the entire Reservation. The courts have consistently rejected that notion, but the tribe and BIA still argue its validity.

I would like to add one further point which may not be understood by the Committee and staff. The majority of the individual allotments of the Quinault Indian Reservation are not owned by the Quinault Tribe or even Quinault Indians. In preparation for the litigation, we have undertaken an analysis of the land ownership at the Reservation; this project is not complete, but current figures indicate that some 60 percent of the land is owned by Chinook, Cowlitz and Chehalis Indians. This certainly supports our contention that compensation for boundary survey error should not be given to the Quinaults exclusively, and undercuts Quinault Tribe's contention that the Reservation exists for its membership and that it speaks for the landowners.

This legislation is the wrong bill at the wrong time. We urge this Committee to reject it and await the court determinations which will come from our litigation. Alternatively, the bill should be amended to transfer the land to the Secretary in trust to be part of the Reservation and not in trust for the Quinault Tribe.

Thank you.

EXHIBIT A

Testimony of Dennis J. Whittlesey

HISTORY OF THE QUINAULT INDIAN RESERVATION

EXHIBIT A

Amicus Curiae Brief of the
Chinook Indian Tribe

HISTORY OF THE QUINAULT INDIAN RESERVATION

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HISTORY OF THE QUINAULT INDIAN RESERVATION

It is important to study the history of the Quinault Indian Reservation in order to understand the current status of (a) the Reservation and (b) the various tribes for whom it was established. As is clear from the following discussion, there are several indisputable facts which must affect this Court's final judgment in the instant litigation:

1. the Quinault Indian Reservation was established for eight Indian tribes: Quinault, Quileute, Chinook, Cowlitz, Chehalis, Hoh, Quit (or Queet) and Ozette (or Makah);
2. the tribes listed at paragraph No. 1 not signatory to the treaty signed by the Quinaults and Quileutes are now affiliated with the signatory tribes, as a matter of law;
3. the affiliated tribes have full and coequal substantive rights under the Treaty of Olympia of July 1, 1855, and January 25, 1856 (12 Stat. 971);

EXHIBIT A - 1

4. the Quinault Indian Nation is not an IRA tribe, although the Chinook Tribe believes that the Quinault Indian Reservation is an IRA reservation; and,

5. as a matter of law, the Quinault Indian Nation has never been recognized as the governing body of the Quinault Indian Reservation.

Detailed histories of the Treaty of Olympia are found in Halbert v. United States, 283 U.S. 753 (1931); Wahkiakum Band of Chinook Indians v. Bateman, et al., 655 F.2d 176 (9th Cir. 1981); The Quinaielt Tribe of Indians v. The United States, 102 Ct.Cl. 822 (1945); and Solicitor's Opinion, D-40140 (September 2, 1916). There is no serious dispute as to the following discussion.

A. Treaty of Olympia.

The history of the Reservation must begin with an understanding of the background of the Treaty of Olympia, supra, which was executed by the Quinault and Quileute tribes and bands.

The Treaty of Olympia was preceded by the so-called Chehalis River Treaty Council held in 1855 prior to the treaty session at Olympia. Governor Isaac Stevens convened all the coastal and interior tribes of the area without understanding the alliances and animosities which existed between them. It was his intention, and insistence, to place all of these tribes on a single reservation which previously had been set aside for other Indians by the Treaties of Medicine Creek and Point-No-Point. [1] Virtually all of the tribes refused to accept such a plan and Governor Stevens angrily dismissed the treaty council. [2]

Although the Chehalis River negotiations failed to achieve their full purpose, they did result in a treaty between the United States and the Quinaults and Quileutes. Later in 1855, aides of Governor Stevens met with the two tribes and signed the treaty which was presented to him in Olympia in early 1856.

The treaty guaranteed to the Indians a reservation "sufficient for their wants" and ARTICLE VI provided that the President "may consolidate them with other friendly tribes and bands" on that reservation. The language about consolidation

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[1] Duwamish, et al. v. United States, 79 C.Cls. 530, 601 (1934).

[2] In addition to the other case citations noted in the text, the Indian Claims Commission found that the Chehalis River Treaty Council was an unsuccessful attempt to negotiate a treaty with the Chinook Indian Tribe and various bands of Chinooks which now are components of the Chinook Tribe. The Chinook Tribe and Bands of Indians v. United States, 6 Ind. Cl. Comm. 177, 195 (1958).

(or "affiliation") was incorporated into the treaty after (a) the failure of negotiations at Chehalis River and (b) the end of all negotiations with the Chinook Indians.

B. Executive Order of 1873.

In 1863, an area of 10,000 acres was tentatively defined for this reservation but it was never formally established as such.

Ten years after the tentative designation, the Reservation finally was created by the Executive Order of November 4, 1873. [3/] By this order, President Grant stated that he intended "to provide for other Indians in that locality" by withdrawing lands from the public domain "for the use of the Quinaielt, Quillehute, Quit, and other tribes of fish-eating Indians on the Pacific Coast." (Emphasis supplied.) A total of 220,000 acres was then designated for the Reservation.

C. Land Allotment Laws and Practices.

Pursuant to the Dawes Act of February 8, 1887 (24 Stat. 388), allotments were being made on the Reservation by the turn of the century. However, the tribes which were affiliated on the Reservation by the Executive Order were having difficulty in obtaining allotments, a situation

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[3/] Kappler, "Indian Affairs Laws and Treaties," Vol. II, p. 923.

EXHIBIT A - 4

which Congress sought to remedy through the Allotment Act of March 4, 1911 (36 Stat. 1345).

The Allotment Act of 1911 directed the Secretary of the Interior to make allotments on the Quinault Reservation

> to all members of the Hoh, Quileute, Ozette or other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute tribes in the treaty [of Olympia] . . . and who may elect to take allotments on the Quinaielt Reservation rather than on the reservations set apart for those tribes. [Emphasis supplied.]

In Halbert v. United States, supra, the Supreme Court noted that both the Bureau of Indian Affairs and Congress recognized that Chinook Indians had reserved rights under the Treaty of Olympia by virtue of their post-treaty affiliation, and that the 1911 Allotment Act was enacted specifically to guarantee their rights to land within the Reservation.

D. The Lighthouse Reserve.

There has been a consistent recognition by Congress and the Courts that all of the affiliated tribes had coequal rights within the Quinault Reservation. By the Act of August 22, 1914 (38 Stat. 704), Congress authorized the Secretary of the Interior to set aside Indian lands within the Reservation for lighthouse purposes, for which payment was to be deposited in the United States Treasury not in favor of the Quinault Tribe but rather "to the credit of the Indians of the Quinaielt Reservation." (Emphasis supplied.) In addition, Congress reserved the mineral rights within the Lighthouse Reserve again "for the use and benefit of the Indians of the Quinaielt Reservation." (Emphasis supplied.)

E. The Halbert Case.

Around 1916, the allotment process was halted within the Reservation after more than 600 allotments had been made. The stated reason for this cessation was that Bureau of Indian Affairs Forestry Staff had concluded that timber lands should not be allotted. Since all agricultural and grazing lands within the Reservation had been allotted, there was no land remaining which was "suitable" for allotment.

An unallotted Quileute sued to obtain an allotment from the timber land sections of the Reservation, and the Supreme Court ruled that he was entitled to an allotment of "timbered lands capable of being cleared and cultivated." United States v. Payne, 264 U.S. 446, 449 (1924). Thus, timber lands within the reservation were to be allotted.

Following Payne, allotments chiefly were made to Quileutes, Hohs and Quits. Few allotments were being made to Chinook, Cowlitz or Chehalis Indians, so they were forced to litigate their entitlement thereto, notwithstanding the Allotment Act of 1911 and their post-treaty affiliation on the Reservation. Halbert v. United States, supra.

In Halbert, the Supreme Court found that individual Indians who were members of the Chinook, Cowlitz and Chehalis Tribes had a right to allotments at the Quinault Reservation because, as a matter of law, they were affiliated with the signatory tribes to the Treaty of Olympia. The Court specifically cited the Executive Order of 1873 and the Allotment Act of 1911, and noted that Interior had consistently taken the position (beginning in 1913) that the 1911 legislation provided for tribes such as the Chinook and Cowlitz and that further legislation was not necessary to protect their entitlements to allotments within the Quinault Reservation.

The Court found that post-treaty affiliation clearly was contemplated by the Treaty of Olympia:

> Strictly speaking there was no affiliation in the treaty. But the treaty did contain a provision under which affiliation might be brought about. [Emphasis supplied.] (283 U.S. at 759)

As for the inclusion of Chinooks within the affiliation provisions of the treaty and the Executive Order of 1873, the Court observed that the affiliating language unquestionably applied to the Chinooks:

> In 1855, the Quinaielt, Quillehute (also called the Quileute), Chehalis, Chinook, and Cowlitz Indians were neighboring tribes in the southwesterly section of what is now the state of Washington.

> They were all known as "fish-eating Indians" and lived in small villages adjacent to the Pacific coast and the lower reaches of the Columbia River. The Quits and Ozettes were also fish-eating tribes living in coast villages a little north of the others*** [Emphasis supplied.] (283 U.S. at 756)

As evidence that it always was contemplated that the Chinooks would be part of the affiliation process, the Court noted that Chinooks directly were referenced in the local superintendant's recommendation that the proposed 10,000 acre reservation be expanded:

> Under the treaty a reservation of about 10,000 acres at the mouth of the Quinaielt river was provisionally selected and its boundaries surveyed. Some years later the local superintendant reported that the reservation by reason of being small and containing but a small amount of agricultural and pasture lands, had proved unattractive to the Indians; that the Chehalis, Chinook, and other coastal tribes in southwestern Washington, like the Quinaielts and Quillehutes, who were parties to the treaty, were all "emphatically fish-eaters," drawing their subsistence almost wholly from the water, and that all of these fish-eating tribes should be collected on a single reservation, including suitable fisheries. To that end he recommended that the existing reservation be greatly enlarged and designated the territory which he believed should be included in it. This recommendation led to [the Executive] Order of November 4, 1873 *** [Emphasis supplied.] (283 U.S. at 757)

In addition, the Supreme Court noted several additional facts which further support the determination that a post-treaty affiliation had occurred:

1. prior to 1911, over 750 allotments had been made at the Quinault Reservation, more than

half of which were made to members of tribes other than the treaty signatories;

2. more than 20 percent of the pre-1911 allottees had never resided on the reservation; and,
3. as of 1911, Congress and the Bureau of Indian Affairs felt it "altogether appropriate" to "speak of" the other tribes as being affiliated under the treaty.

(See, 283 U.S. at 759-61.)

F. Post-Halbert Case Law.

Since the 1931 ruling, other courts have looked at the situation at Quinault and the question of post-treaty affiliation. Without exception, they have held that there was a post-treaty affiliation under the Treaty of Olympia and the Executive Order of 1873, and that the affiliated tribes still enjoy rights as a result of that affiliation.

1. The "Boundary Dispute" Litigation.

A survey error led to an incorrect drawing of Reservation boundaries and a slight reduction in total land area. Congress authorized litigation in the United States Court of Claims to recover from the United States the value of land erroneously excluded from the Reservation through this survey error. [4/]

The Quinault Tribe filed the litigation, but the Court concluded that the case could not go forward because the Quinaults do not have exclusive rights to the Reservation. The Court recognized that the Chinook, Quileute, Hoh, Quit, Chehalis, Cowlitz and Ozette Tribes hold rights in addition to those of the Quinault Tribe. The Quinaielt Tribe of Indians v. The United States, 102 Ct.Cl. 822 (1945). Among its Findings of Fact, the Court of Claims stated the following:

> After the date of this Executive Order [of 1873] the plaintiff and the Quillehutes, Hohs, Quits, Chehalis, Chinook, Cowlitz, and Ozette tribes, and any other tribes in the Territory of Washington who may have been affiliated with the Quinaielt and Quillehute tribes were entitled to equal rights in this reservation. [Emphasis supplied.] Finding of Fact No. 3. (102 Ct.Cl. at 825)

Recognizing the interaction between the treaty provisions allowing for affiliation and the Executive Order of 1873, and citing Halbert, the Court found that the Chinook, Chehalis and Cowlitz Tribes are "entitled to equal rights in the reserva-

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[4/] Act of February 12, 1925 (43 Stat. 886).

EXHIBIT A - 10

tion" [5] since they were affiliated tribes, concluding:

> It is plain, therefore, that the Quinaielts are not entitled to exclusive rights in the reservation. The Quillehutes, Hohs, Quits, Chehalis, Chinook and Cowlitz tribes are also entitled to an interest therein. (102 C.Cls. at 835)

In addition to its 1945 opinion in the Boundary Dispute, the Court of Claims looked at the case a second time. The Quinaielt Tribe of Indians v. The United States, 118 Ct.Cl. 220 (1951). Again relying upon Halbert, the Court observed, "the Chehalis, Chinook, and Cowlitz tribes were [found by the Supreme Court to be] entitled to equal rights in the reservation. [Emphasis supplied.]" [6] Moreover, the Court observed that the Chinooks were allotted in large numbers after the Halbert decision was rendered. [7]

2. The Fishing Rights Litigation.

Certain Chinook Indians recently litigated the issue of post-treaty affiliation and whether they have federally protected rights to fish as Indians pursuant to the Treaty of Olympia. Wahkiakum Band of Chinook Indians v. Bateman, et al., supra. Although the Wahkiakum Band is a separate entity from the Chinook Indian Tribe, its members also are members of the Chinook Indian Tribe and its legal and factual history is identical to that of the Chinook Indian Tribe.

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[5] 102 Ct.Cl. at 835.

[6] 118 Ct.Cl. at 226.

[7] Ibid.

Declaring that Halbert "does state that the Chinook are affiliated with the Quinaults under the Treaty of Olympia," [8/] the Ninth Circuit reaffirmed that a post-treaty affiliation of Chinooks had occurred at the Quinault Reservation and that Chinooks have coequal and joint rights and jurisdiction at the Reservation:

> As members of a tribe subsequently affiliated with the Quinault under the treaty, [the affiliated tribes] are, however, entitled to share such rights as are granted to the original signatories by the treaty. [Emphasis supplied.] (655 F.2d at 179-80)

G. The 1935 IRA Election.

Finally, it is well-documented that the affiliated tribes -- regardless of whether the voters then resided within the Reservation -- were permitted to the vote in the 1935 election at the Quinault Reservation in order to determine whether the IRA would be applicable thereto. These voters included members of the Chinook Indian Tribe.

[8/] 655 F.2d at 178.

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TESTIMONY OF
Joseph B. DeLaCruz, President
QUINAULT INDIAN NATION
ON S. 2752
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
SEPTEMBER 12, 1988

Thank you, Mr. Chairman, for your interest and that of the Committee in the problems faced by Indian people and for your special interest in the issues confronting the Quinault Indian Reservation. I am pleased to have the opportunity to testify today on behalf of the Quinault Indian Nation in support of S. 2752.

This legislation presents a unique opportunity to address a number of our longstanding problems in a creative and positive manner. S. 2752 provides the means for the Quinault Nation to address problems of checkerboard ownership and progressive fractionation which preclude full realization of the potential contributions of our Reservation's land and timber resources to both the tribal and local economies.

Several of the points which I will touch upon are covered in more detail in a memorandum prepared by Committee Staff titled "Quinault North Boundary Claims", dated July 15, 1988. I ask that this memorandum, a copy of which is attached to my testimony, be included in the formal hearing record. The Quinault Nation has also prepared a number of proposed technical amendments for consideration by the Committee. A memorandum discussing these proposed amendments is also attached and is submitted for the record.

By treaty, the Quinault Indians ceded to the Untied States a vast tract of land on what is now the Olympic Peninsula in the State of Washington. As part of the treaty, the United States promised to protect the way of life and provide a suitable reservation for our exclusive use and occupancy. To our people, land is life. We are priviledged to use the land, and the land in turn sustains our economy and spirit.

The Quinault Nation is the recognized government of the Quinault Reservation. Our membership consists of individuals descended from the several tribal groups that were allotted on the Reservation. As a matter of right provided in our Constitution, an individual can enroll in the Quinault Nation if his or her combined tribal heritage is at least one-quarter Quinault, Queets, Hoh, Quileute, Chehalis, Cowlitz, or Chinook. The current membership of the Quinault Nation reflects this diverse tribal heritage, with over one-half of our members having Chehalis, Chinook, or Cowlitz ancestry.

The boundaries of the Quinault Reservation were established by Executive Order issued by President Grant in 1873. The Reservation, encompassing approximately 300 square miles, is a triangular shaped tract of land, bounded on the west by the Pacific Ocean, and on the north and east by the foothills of the Olympic Mountains. The richness of the rivers and forests once provided the resources to sustain the way of life of the Quinault people. Unfortunately, however, misguided federal policies of the past have deprived our people of this priceless heritage.

First, although the Reservation boundary was established by Executive Order in 1873, it was not surveyed until 1892. In the interim, a number of settlers had taken claims along the north shore of Lake Quinault. To avoid inconveniencing these settlers, the surveyor was improperly instructed to exclude almost 16,000 acres running along almost the entire north boundary of the Reservation.

Second, the federal trustee allotted nearly the entire Reservation land base. Allotments were issued over the objections of its own foresters who recognized that little, if any, of the Quinault Reservation is suitable for agriculture and foresaw the extreme management difficulties which would result from breaking up the Reservation's timber resources into small separately owned parcels.

Third, commencing in the 1920's the federal trustee entered into several long term timber harvesting contracts which authorized extensive clear cutting without regard to forest regeneration or the preservation of habitat vital to fish and wildlife.

Fourth, pursuant to the ill-conceived termination policy of the 1950's, the federal government launched a program that encouraged individuals to dispose of their allotments so as to reduce the burden of fulfilling its trust obligations.

The distribution of Reservation land through allotment and subsequent alienation and fractionation, have precluded orderly development of our forest resources. Administrative problems and costs continue to increase while prospects for managing our forest lands according to sound conservation principles dwindle.

Since the completion of the Reservation's allotment, ownership of the Reservation land has grown increasingly complex with each passing day. Over 30% of our Reservation's land base has been alienated to non-Indians. Of the land remaining in trust, the well-recognized and often studied Indian heirship problem has resulted in increasing fractionation and declining utilization of resources.

Today, there are over 25,000 separate fractional interests in the Reservation's remaining 1600 trust allotments. In testimony before this Committee a few years ago, the Bureau of Indian Affairs estimated the cost of administering each fractional interest at $50 annually. Using this figure, the cost to the Federal government of merely administering the records for fractional interests on the Quinault Reservation can be estimated at over $1 million each year. Unless measures are taken now to check progressive fractionation, by the time the next forest crop matures in 50-60 years, administrative costs will increase geometrically. As the Quinault forest lands continue to fractionate and the number of interests increase over time, the cost to the federal government of management of these interests can only escalate.

While the cost of managing Quinault forests rises, the productivity of those forests will likely decline, due in large part to the difficulties that the Bureau of Indian Affairs faces in managing the allotted forest lands of the Quinault Reservation. As a Chief Forester of the Bureau of Indian Affairs recently recognized, the "divided ownership resulting from allotment of forest lands has presented one of the most perplexing management problems with which the Indian Bureau has had to deal in the development of Indian forests."

For the past several decades, Quinault timber has accounted for over 28% of the timber harvest in the twin Harbors region of Washington State. Continued decline in the productivity of the Quinault forest will therefore have dire consequences not only for the Reservation, but for the entire local economy.

Quinault forest lands have been conservatively estimated to be capable of supporting a sustained annual harvest of 150 million board feet and of providing employment for 4000 workers. Yet, due in large part to the legacy of the allotment policy between 1976 and 1986 the annual harvest from the Quinault Reservation forest has dropped from over 203 million board feet to 60 million board feet; in the process, over 3000 jobs have been lost to the local economy and our people.

To address these problems, in 1975 the Quinault Nation initiated a program to develop the Reservation's tribal and allotted forest lands. The Nation contracted with BIA under the authority of the Indian Self-Determination Act to operate a forestry program that employs progressive forest management techniques similar to those employed by leading timber companies. The program is a comprehensive and highly ambitious plan of investment in the future.

Significant progress in correcting past management deficiencies has been made over the last decade. Backlogs of reforestation and rehabilitation have been reduced and logging practices vastly improved through the adoption and enforcement of tribal forest practices regulations.

This patchwork ownership pattern has fostered controversy and conflict while precluding the economic development of the Reservation's resources. The need for unified management of Quinault lands to realize the full potential productivity of their forest resources is no recent revelation. For more than 70 years, the problems plaguing management of our forests have been discussed and the solution known. It was recognized in the early 1900's by the late J.P. Kinney, the first Chief of the Indian Forest Service, by Commissioner of Indian Affairs John Collier during the 1930's, by President Roosevelt in 1938, by Congress in 1939 and 1941, and numerous other times by officials of the federal government. For example, in its 1940 Report on the Status of Indian Forests, the Bureau of Indian Affairs recommended:

> The aim of the Indian forest administration is to manage the Indian property for the social and industrial advancement of the Indians without diminishing the value thereof as a national asset. Accomplishment of this objective requires consolidation of the forest lands, and the establishment of Indian forests as permanent institutions to be held in trust by the United States and managed under principles of sustained yield.

Because the allotment of the entire Reservation impoverished the Quinault Nation, funds have not been available to implement an effective land consolidation effort. Little progress has been possible to correct the management problems caused by continued fractionation of land ownership and alienation. Each year, we are unable to purchase the interests of individual allottees and non-Indian timber companies who wish to sell their property to the Quinault Nation. Until we can gain access to the resources necessary to address the management problems caused by the current land ownership patterns on our Reservation, the capacity to utilize our resources to benefit the Quinault people and the region will remain unrealized.

As I indicated at the beginning of my testimony, S. 2752 is a unique and creative vehicle for providing funding necessary to initiate a land consolidation program on the Quinault Indian Reservation. S. 2752 does this by restoring lands to the Quinault Indian Nation which were improperly excluded from the Reservation and dedicating timber proceeds derived from the restoration lands to timber management, reforestation, and reservation land consolidation.

Based upon information provided by the U.S. Forest Service that counties receive $50,000 per year under the distribution formulas set forth in federal law, the total annual income from timber sales on the land to be restored would approximate $200,000. This figure, however, appears to be inconsistent with current domestic log prices and timber growth potentials on the land to be restored. The lands to be restored should produce an average annual income closer to $1 million on a sustained yield basis. The reason for this inconsistency is unknown at the present time.

The potential income form the land to be restored approximates the current cost incurred by the Federal government to administer the Reservation's fractional ownership interests. When viewed in light of prospective costs under present land ownership patterns, S. 2752 represents a very sound investment in the future of the Quinault people, the region, and the United States.

The modest average annual income that would be generated from the restored lands under a sustained yield program will provide a sorely needed source of capital for development of our forest resources. S. 2752 provides the seed that will enable us to move forward in our attempt to achieve our goals for restoring the productive potential of Quinault Reservation resources and the heritage of our people.

Correction of the Quinault Reservation's north boundary is not a new issue. In 1979, Congress appropriated $30,000 to "determine the true north boundary of the Quinault Indian Reservation." S. 2752 is a long overdue effort to correct a grievous injustice.

Over the long term, the Quinault Indian Nation hopes to develop the Reservation economic base, reduce the tribe's dependence on the federal government, and ultimately attain economic self-sufficiency and full self-determination. We ask for your support in enacting S. 2752.

Thank you.

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PROPOSED TECHNICAL AMENDMENTS
TO
S. 2752

SUBMITTED BY THE QUINAULT INDIAN NATION
TO THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
ON
SEPTEMBER 12, 1988

The Quinault Indian Nation respectfully submits the following technical amendments to S. 2752 for consideration by the Senate Select Committee on Indian Affairs. Our proposed amendments are relatively minor and are intended to: clarify the intent of the legislation; clarify the relationship of the Quinault Indian Nation (QIN) and the Secretary of the Interior as allowed by P.L. 93-638; or establish and define process and procedures for implementation.

Proposed amendment to SEC. 2. ADMINISTRATION OF LANDS - add provision to end of section as follows:

Provided that, nothing herein shall prevent the Quinault Indian Nation from contracting with the Secretary of Interior to administer said lands pursuant to Public Law 93-638, as amended.

Explanation of proposed amendment to SEC. 2.:

The proposed amendment expressly confirms the Quinault Indian Nation's right to contract with the Secretary of Interior to administer the newly acquired lands under P.L. 93-638.

Proposed amendment to SEC. 4. LIMITATIONS ON TIMBER HARVEST - revise subsection (b) as follows:

(b) In addition to restrictions referred to in subsection (a), lands referred to in Section 1 shall be subject to the restrictions on processing location applicable to the Grays Harbor Sustained Yield Unit administered by the Forest Service.

Explanation of proposed amendment to SEC. 4.:

The primary concern of the Northwest Independent Forest Manufacturers (NIFM) and manufacturers located within Grays Harbor County is to ensure the status quo on export restrictions and processing location requirements are maintained. Both the existing language and our proposed language for subsection (b) can satisfy their concerns. The existing language, however, is unclear as to the intent behind words as to how the newly acquired lands can "be administered in the same manner" as lands of the Grays Harbor Federal Sustained Yield Unit.

Our concern is that the existing language could potentially create administrative conflict in the management of the restoration lands. On the one hand, the land is to be administered by the Secretary of Interior to fulfill Federal trust obligations and responsibilities. On the otherhand, there is a possibility the existing language could be interpreted to imply that the Secretary's administration would be subject to policy decisions set forth by the United States Forest Service.

Proposed amendments to SEC. 5. EXISTING RIGHTS-OF-WAYS AND OTHER INTERESTS - two provisions as follows:

Provided that, nothing herein shall prevent the Secretary of Interior from charging reasonable right-of-way use fees for the purpose of defraying road construction and maintenance costs, Provided further, after the effective date of this Act, all proceeds from leases, permits, timber and mineral sales with respect to lands referred to in Section 1. of this Act shall be held by the united States in trust for the Quinault indian nation and deposited in the fund described in Section 7.

Explanation of proposed amendments to SEC. 5.:

The first provision clarifies that road maintenance and construction costs may be recovered by reasonable road use fees resulting from use by the Forest Service or its contractors. Absent this provision, the legislation is silent with regard to maintenance and construction costs and it is unclear as to whether the Quinault Nation could be burdened by costs associated with activities by the Forest Service or its contractors. Road use fees are a standard mechanism for cost recovery for road maintenance and construction costs.

The second provision makes it clear that the Quinault Nation will receive proceeds from existing contracts on these lands after the effective date of the legislation and the funds will be deposited accordingly.

Proposed amendments to SEC. 6. ACCESS TO NATIONAL FOREST LANDS - rename SEC. 6, create two subsections, and add a provision as follows:

SEC. 6. ACCESS.

(a) The Secretary of Interior shall allow such rights-of-way through lands referred to in section 1 as the Secretary of Agriculture, in consultation with the Secretary of the Interior and the Quinault Indian Nation, considers necessary to provide access to National Forest lands. Such rights of way shall be located and used in such manner as the Secretary of the Interior, in consultation with the Secretary of Agriculture and the Quinault Indian Nation, determines to be appropriate. Provided that nothing herein shall prevent the Secretary of Interior from charging reasonable right-of-way use fees for the purpose of defraying road construction and maintenance costs.

(b) The Secretary of Agriculture shall allow such rights-of-way through National Forest lands as the Secretary of the Interior, in consultation with the Secretary of Agriculture and the Quinault Indian Nation, considers necessary to provide access to lands referred to in section 1. Such rights of way shall be located and used in such manner as the Secretary of Agriculture, in consultation with the Secretary of Interior and the Quinault Indian Nation determines to be appropriate.

Explanation of proposed amendments to SEC. 6.:

The language and reasons for the provision on use fees are the same as those for the suggested first provision of section 5 of this legislation. The concern is to ensure the Quinault Nation is not compelled to pay for roads necessary to provide access to Forest Service land.

Subsection (b) has been added to guarantee the Quinault Indian Nation has reciprocal access rights and procedures if necessary to provide access to section 1. lands from Forest Service lands. Given the topography of the land and the existing road systems, there may be times when access to the newly acquired lands will be less costly or environmentally damaging from the north or across Forest Service land than from developing access from within the restoration lands.

Proposed amendments to SEC. 7. USE OF TIMBER SALES PROCEEDS. - Subsections (a) and (c) are revised as follows:

(a) costs incurred by the Quinault Indian Nation for the preparation and administration of timber sales, including road construction and maintenance on such lands;

(c) for reforestation of any lands referred to in section 1. or any other lands held by the Quinault Indian Nation within the external boundaries of the Quinault Indian Reservation. Provided that, nothing herein shall allow the Secretary of the Interior to substitute these funds for other appropriated funds or for Forest Management Deductions, funds presently available for reforestation; or

Explanation of proposed amendments to SEC. 7.:

Subsection (a) was simply revised to indicate road construction and maintenance is a cost of preparation and administration of timber sales. Since the land in the disputed North Boundary Area is extremely steep, road building and maintenance will be a major cost component and a critical environmental concern.

The provision for subsection (c) was added to prevent the BIA from substituting funds appropriated for fulfilling their trust responsibilities with income generated from timber sales from the restored lands.

The Quinault Nation is the Proper Recipient of the Land

The Quinault Indian Nation is a confederated Indian tribe composed of individual tribal members whose ancestry can be traced to the aboriginal Indian groups which the United States hoped to locate on the Quinault Reservation. The evolution of the Quinault Nation into a confederated tribe composed of members of diverse tribal ancestry occurred partly as the result of federal design in allotting many Southwest Washington Indians on the Quinault Reservation, and encouraging them to relocate to the Reservation. In part this confederation is the result of the adoption by the Quinault Indian Nation of an extremely liberal enrollment policy.

The Constitution of the Quinault Nation admits to tribal membership, as a matter of right, any person of 1/4 or more Quinault, Queets, Quileute, Hoh, Chinook, Chehalis, or Cowlitz ancestry or any combination thereof who is not a member of another federally recognized Indian tribe. Article II, Section 1 Constitution of the Quinault Indian Nation. Attachment A. Persons of less than 1/4 blood may be adopted at the discretion of the tribe. Adoption is open equally to persons of Quinault, Queets, Hoh, Quileute, Chehalis, Chinook, and Cowlitz blood. Id.

Contrary to assertions which may be made by certain individuals, membership in the Quinault Nation is not limited to people of Quinault ancestry or to Quinault Reservation residents. In fact, more current members of the Quinault Nation have Chinook or Cowlitz ancestry than Quinault. Attachment B.

The confederated nature of the Quinault Nation and its status as the tribe governing the Quinault Indian Reservation and the beneficiary of tribal lands on the Quinault Reservation has been repeatedly recognized. It is clearly the rightful beneficiary of tribal lands restored to the Quinault Reservation under S. 2752.

Questions with respect to the legitimacy of the Quinault Indian Nation and its authority over the Quinault Indian Reservation have been repeatedly addressed over the years.

1947

In 1947 Congress recognized the confederated nature of the Quinault Nation when it enacted a statute declaring the Quinault Tribe the proper party to pursue "on behalf of all Indians having an interest in the Quinaielt Reservation" an action against the United States arising from the north boundary survey. 61 Stat. 416. The statute reads in pertinent part:

> [T]he Quinaielt Tribe is hereby declared to be the proper party plaintiff for the purpose of further proceedings ... and for the purpose of prosecuting the action to a final conclusion on behalf of all Indians having rights in the Quinaielt Reservation as established under the

treaty of July 1, 1855, and January 25, 1856 (12 Stat. 971), the Executive Order of November 4, 1873, and any subsequent acts of Congress.

In support of this legislation the Secretary of Interior advised Congress that it "was proper to refer to the collective group regardless of tribal blood as the Quinault Indians..." The Secretary further advised Congress that "[c]ollectively the Indians having an interest in that reservation, including those of the blood of other tribes consolidated with the Quinault pursuant to the treaty, Executive Order, and act of Congress may be regarded as one tribe." Letter dated May 22, 1947, from Secretary of the Interior to Chair House Committee on Public Lands, reprinted in, H.R. Rep. No. 671, 80th Cong. 1st Sess. (1947). Attachment C.

1960's

Congress has continued to recognize the Quinault Nation as the tribe governing the Quinault Reservation and as the beneficial owner of tribal lands within the Reservation. In 1962, for example, Congress restored to the "Quinault Tribe of Indians" 85 acres of tribal land which had been previously appropriated by the United States for lighthouse purposes. Act of October 15, 1962, 76 Stat. 913. To the same effect is the Act of August 26, 1959, 73 Stat. 427, which also returns tribal lands to the Quinault Tribe.

Other legislative recognition includes:

The Act of June 6, 1934, 48 Stat. 910 recognizing the Quinault Tribe's ownership of tribal timber on the Quinault Reservation. Under this Act tribal timber contracts may be modified and tribal timber may be sold only with the consent of a regularly called general council of the tribe.

1970's

1975

The Commissioner of Indian Affairs in a September 8, 1975 memorandum to the Portland Area Director rejected claims by Helen Mitchell that the adoption of the Nation's 1975 constitution was irregular. Attachment D. While the Commissioner expressed reservations which caused him to decline to either approve or disapprove the Constitution he stated: "We ... recognize the document as a medium through which the Quinault people elect their representatives and as a guideline for those representatives."

The Commissioner encouraged the Quinault Nation to consider adoption of an IRA constitution the Commissioner, but found no error in the Nation's decision not to organize under the IRA. He stated: "[W]e can find no fault with a tribe determining the nature of its organic document."

It should be noted that the Commissioner's reservations with respect to the Constitution had nothing whatsoever to do with the Constitution's enrollment provisions, nor did the Commissioner question the adequacy of the Nation's representation of all Indians having an interest with the Reservation.

1977

In a July 22, 1977 memorandum by the Acting Associate Solicitor addressing the validity of a zoning ordinance adopted by the Quinault Business Committee pursuant to the 1975 constitution, the Acting Associate Solicitor wrote:

> [T]he 1975 Tribal Constitution is a revision of the Tribe's 1922 By-Laws and by its terms does not require Secretarial approval for it to be effective. Since it is a revision of a pre-IRA constitution, Secretarial approval is not necessary under 25 U.S.C. 476, even though the Quinault's are an IRA tribe. See Sol. Op. October 13, 1976, Re: Crow Tribe an IRA Tribe Operating under a Non-IRA Constitution.

Attachment E. Note also in support of the position that a tribe which has accepted the IRA need not reorganize under Section 16. Kerr-McGee Corp. v. Navajo Tribe, 731 F.2d 597, 603-04 (9th Cir. 1984), affirmed, U.S. (19); Southland Royalty Co. v. Navajo Tribe, 715 F. 2d 486, 489 (10th Cir. 1983); II Opinions of the Solicitor Department of the Interior, 1988, 1992.

1980 - 1981

Around the time that the Quinault Nation amended its constitution in 1975 a group calling itself the Confederated Fish Eating Indians of Western Washington formed and incorporated under state law. This group later changed its name to the Indians of the Quinault Reservation. The IQR has sought to discredit the Quinault Indian Nation's governance of the Quinault Indian Reservation. It seeks to replace the Quinault Indian Nation with a new tribal organization in which membership would be open to individuals with too little Indian blood (<1/4 blood) to enroll in the Quinault Indian Nation and to those who although otherwise qualified for enrollment in the Quinault Indian Nation decline to relinquish their enrollment in other recognized tribes. This group has three basic constituencies:

1) Individuals with too little Indian blood to enroll in any recognized tribe, including individuals who claim membership in the unrecognized Chinook and Cowlitz groups;
2) Individuals who have adequate Indian blood to enroll in the Quinault Indian Nation, but who do not wish to relinquish their enrollment in another tribe in order to become a Quinault tribal member;
3) A small group of dissident members of the Quinault Indian Nation.

In response to the claims of this group the Acting Associate Solicitor for Indian Affairs in a March 18, 1980, opinion reaffirmed the status of the Quinault Indian Nation as the exclusive governing body of the Quinault Reservation. Attachment F. The Solicitor and subsequently the Secretary of the Interior rejected requests to organize a new tribal government for the Quinault Reservation consisting of the allottees and their descendants at the request of this group which at the time was represented by Dennis Whittlesey.

Reviewing this history of Congressional recognition, the Solicitor's 1980 opinion concludes:

> At Quinault a tribal council does exist which Congress has recognized at least since 1947 as representing the Indians of the Quinault Reservation regardless of their original tribal ancestry. This has been reaffirmed at least twice since 1947 when Congress has transferred lands to the "Quinault Tribe of Indians."

(Citations omitted.) This opinion was later affirmed by the Secretary in Indians of the Quinault Reservation v. Commissioner of Indian Affairs, 9 IBIA 81 (1981). Attachment G. No appeal was taken.

See also Letter of June 27, 1980, Dale Itschner, Asst. Regional Solicitor to Dan Van Mechlen, Chairman Indians of the Quinault Reservation. Attachment H.

1984 - 1985

In 1985 following the Court of Appeals decision in Williams v. Clark, 742 F.2d 549 (9th Cir 1984), the Solicitor for the Department of the Interior advised the Quinault Indian Nation by letter that the "decision in Williams does not change the Department's basic view that the Quinault Indian Nation is the Indian governing body for the Quinault Reservation. Letter of November 28, 1984, Mary Walker for the Solicitor to Joseph B. DeLaCruz. Attachment I.

Several months later the Solicitor General of the United States urged the Supreme Court to deny review of the Court of Appeals decision in Williams advising the Court that:

> The court of appeals' decision does not disturb the federal government's longstanding recognition of the Quinault Nation's exclusive political jurisdiction on the Quinault Reservation. ... [T]he court of appeals did not--and did not purport to--call in question the Executive Branch's recognition of the Quinault Nation.

Brief of the Secretary of the Interior in Opposition, Elvrum v. Williams, No. 84-943. Attachment J.

Contemporaneously, the Regional Solicitor issued an opinion regarding the effect of the Williams decision on implementation of the Indian Land Consolidation Act. The Regional Solicitor concluded the Quinault Indian Nation is the rightful tribal beneficiary of interests in trust land located on the Quinault Reservation which are subject to the escheat provisions of Section 207 of the ILCA. In reaching this conclusion he rejected claims that escheated interests should devolve to other tribal claimants. Memorandum from Assistant Regional Solicitor to Area Director, Pacific Northwest Region Re: Effect of Decision in Williams v. Clark on Implementation of the Indian Land Consolidation Act, dated April 22, 1985. Attachment K.

Note: In Williams v. Clark the Court of Appeals declined an invitation by the so-called Chinook Tribe appearing as amicus and represented by Dennis Whittlesey to recognize the group's tribal status and its claims to the Quinault Reservation.

1985

In 1985 Helen Sanders Kirschling again raised questions regarding the Quinault Nation's authority to govern the Quinault Reservation. In testimony before the Washington legislature in connection with legislation relating to the proposed Quinault Tribal Highway she questioned the Quinault Nation's legitimacy as the governing tribe of the Quinault Reservation. The State Attorney General's Office after reviewing the material submitted by Mrs. Kirschling and contacting the Bureau of Indian Affairs concluded that Mrs. Kirschling's claims were unfounded. Memorandum from Assistant Attorney General, R.A. Wright to D. Berentson, Director, Washington Department of Transportation Re: Quinault Tribal Highway Bill, dated February 27, 1985. Attachment L.

1988

Most recently in response to claims made by certain parties that the Quinault Nation is not the appropriate beneficiary of the lands which would be restored to the Quinault Reservation under S. 2752 the Portland Area Director of the Bureau of Indian Affairs wrote: "[T]here should be no question but that the Quinault Indian Nation is the appropriate beneficiary of this proposed legislation." Memorandum of September 2, 1988, from the Portland Area Director to the Assistant Secretary-Indian Affairs Re: S. 2752. Attachment M.

Conclusion

The bottom line is that while individual members of other tribes have a recognized right to hold lands on the Quinault Indian Reservation, no tribal group other than the Quinault Indian Nation has been recognized by Congress or the Administration as having a beneficial interest in the tribal lands of the Quinault Reservation or as exercising any governmental authority over the Quinault Indian Reservation.

CONSTITUTION OF THE
QUINAULT INDIAN NATION

PREAMBLE

We, the Indians of the Quinault Indian Nation, in order to establish a better tribal organization; to preserve our land base, culture and identity; to safequard our interest and general welfare; to secure the blessings of freedon and liberty for ourselves and for our posterity; and to amend our By Laws of August 22, 1922, as amended, do hereby approve and adopt this Constitution.

ARTICLE I - SOVEREIGNTY

SECTION 1 - SOVEREIGNTY: Notwithstanding the issuance of any patent, the jurisdiction and governmental power of the Quinault Nation shall extend to: (a) all lands, resources, and waters reserved to the Quinault Nation pursuant to the Treaty of Olympia, 12 Stat. 971, established by Executive Order dated November 4, 1873 (I kapp. 923) and to all persons acting within the boundaries of those reserved lands or waters; (b) all usual and accustomed fishing grounds, open and unclaimed lands reserved for hunting and gatherings and other lands necessary for the appropriate use of fishing and hunting grounds; and all members exercising tribal hunting, gathering and fighing rights on or off the Quinault Reservation in Quinaults usual and accustomed fighing grounds or: (c) all lands or waters held by the United States in trust or reserved by the Quinault Nation for the use and benefit of any member of the Quinault Tribe when such lands or waters are not within the boundaries of an established Indian Reservation; (d) all members of the Quinault Nation while such members are within the boundaries of the United States of America or any of its Reservations, states, territories, possessions, zones, or districts; except where such jurisdiction is expressly limited by the laws of the United States; (f) offshore marine waters for a distance concurrent with the jurisdiction of the United States.

SECTION 2 - GENERAL WELFARE: It shall be the goal of the Quinault Nation to provide for the general safety and welfare of all persons acting by the right of membership in the Quinault Nation or acting or residing within the jurisdiction of the Quinault Nation.

ARTICLE II - ENROLLMENT

SECTION 1 - MEMBER: (a) Any person of 1/4 Quinault, Queets, Quileute, Hoh, Chinook, Chehalis, or Cowlitz blood of one of the named Tribes or combined, not a member of any other federally recognized Indian tribe. (b) any person adopted into the Nation by a majority vote of the General Council, at a regular annual meeting of that council. The ownership of trust land on the Quinault Reservation shall be an important consideration in recommending adoption, but such ownership shall not be considered a necessary or sufficient qualification or condition for a recommendation of adoption.

SECTION 2 - ENROLLMENT COMMITTEE: (a) Membership. The enrollment committee shall consist of not less than four (4), nor more than nine (9) members of the Quinault Nation, appointed by the Business Committee. (b) Duties. The enrollment committee shall: (1) accept applications for enrollment and adoption, (2) investigate all applications for enrollment and adoption, (3) approve all applications for enrollment where applicants qualify for membership in the Quinault Nation under the provisions of this Constitution. A list of all persons approved for enrollment during the interim between annual General Council meetings shall be published and posted publicly in places determined to be appropriate to inform the general membership of pending enrollment thirty (30) days prior to the next annual General Council meeting and presented by the enrollment committee to the General Council at the next annual General Council meeting, (4) recommend to the General Council for their vote, persons approved by the enrollment committee for adoption into the Quinault Nation; a list of such persons shall be posted with the pending enrollment list; (5) participate in the interviewing and hiring of an enrollment clerk; (6) issue an official notice of denial of enrollment to any person, who, after all due investigation by the enrollment committee is found not to be qualified for enrollment in the Quinault Nation, (7) issue an official notice of denial of recommendation to any person, who, after all due investigation by the enrollment committee is found not to be acceptable for a recommendation of adoption.

SECTION 3 - APPROVED APPLICANTS: All persons approved for enrollment by the enrollment committee shall be considered members for all purposes until their names are presented at an annual General Council meeting; provided, persons approved for enrollment shall not be permitted to vote on the enrollment or adoption of any person.

SECTION 4 - APPEALS: (a) Persons denied enrollment by a final act of the enrollment committee may appeal the decision of the enrollment committee to the General Council and if denied by the General Council may appeal to the Quinault Tribal Court. Persons denied enrollment may request a recommendation of adoption. (b) Persons denied a recommendation of adoption by a final act of the enrollment committee may request that the General Council adopt them at an annual meeting of the Council. The decision of the General Council shall be final.

SECTION 5 - OBJECTIONS TO ENROLLMENT: Any member may object to the enrollment of any person approved for enrollment at the time the name of that person approved for enrollment is presented to the General Council by the enrollment committee. The name of the member objecting shall be recorded and that objecting member shall have ninety (90) days to present sufficient evidence to cause reexamination of the enrollment application to the enrollment committee. During that ninety (90) day period and during any disenrollment investigation, the person objected to shall exercise the rights of a member. If the ninety (90) days shall pass without sufficient evidence being presented to the enrollment committee to cause the enrollment committee to reinvestigate the application, the person objected to shall be enrolled.

SECTION 6 - DISENROLLMENT: (a) The enrollment committee shall not begin review of the enrollment of a member without first notifying a person subject to a disenrollment investigation that he or she is subject to such an investigation and allowing such person to view all evidence being used to question member status. (b) the enrollment committee in a disenrollment investigation shall follow all procedures set out herein for enrollment, including presentation of the names of any finally disenrolled person to the General Council at the next annual meeting of that Council. (c) exclusive grounds for disenrollment shall be that a person submitted fraudulent evidence in the application for enrollment in the Quinault Nation in order to qualify under the provisions of this Constitution, (d) adopted members shall not be subject to disenrollment proceedings, (e) persons finally disenrolled shall have the right to appeal their disenrollment to the Quinault Tribal Court.

ARTICLE III - GENERAL COUNCIL

SECTION 1 - MEMBERSHIP IN THE GENERAL COUNCIL: All members, including adopted members of the Quinault Nation shall be members of the General Council.

SECTION 2 - VOTING: Members of the General Council age 18 years or more, who are present at the appointed time and place of elections shall be permitted to vote in General Council meetings.

SECTION 3 - MEETINGS: (a) The annual meeting of the General Council shall be held on the last Saturday in March at a place within the boundaries of the Quinault Reservation. (b) All meetings of the General Council shall be announced by the Business Committee by posting notices at Taholah, Queets, Amanda Park and any other place determined by the Business Committee at least ten (10) days in advance of the meeting and by publishing notice in a newspaper of general circulation in the vicinity of the Reservation. (c) Special meetings may be called by the Business Committee or by fifty (50) voting members by giving and posting the required notice. (d) The purpose of the General Council meetings shall be to elect or recall the members of the Business Committee and to declare the will of the General Council on issues placed before the General Council by the agenda and by persons raising issues at any meeting. (e) A quorum for conducting business at any meeting shall be fifty (50) voting members. (f) The agenda for the annual meeting shall be published by the Secretary of the Tribe. All items to be placed on the agenda shall be submitted to the Secretary thirty (30) days in advance of the annual meeting. Items on the agenda shall be considered before issues or questions raised from the floor. (g) In addition to the annual meeting, quarterly General Council meetings may be held.

SECTION 4 - BILL OF RESERVED POWERS: The following powers shall be reserved to the General Council and the Business Committee or other agency of the Nation shall be required to obtain the advice and consent of the General Council prior to taking any action with regard to these powers. Any action the Business Committee shall take with regard to these powers without obtaining the advice and consent of the General Council shall be void and have no legal effect. (a) The relinquishment of any National criminal or civil jurisdiction to any agency, public or private; provided that this section shall not prevent the Business Committee from commissioning non-National or non-Bureau of Indian Affairs peace officers to enforce National laws and regulations. (b) The termination of the Quinault Reservation. (c) The adoption of persons into the Nation. (d) The sale of hunting or fishing rights, grounds, or stations. (e) Any other act which jeopardizes any treaty right of the Quinault Nation; or is prohibited to the Business Committee by this Constitution, or by instruction of the General Council, without prior approval of the General Council.

ARTICLE IV - BUSINESS COMMITTEE

SECTION 1 - OFFICERS: The officers of the Nation shall consist of the President, the Vice-President, Secretary and Treasurer and seven (7) Councilmen. The said eleven (11) officers shall constitute the Business Committee of the Quinault Nation and all shall have the right to vote on issues brought before the Business Committee.

SECTION 2 - QUORUM: A quorum of the Business Committee shall consist of at least six (6) officers, including the President and Vice-President, and decisions shall be made by a majority vote of those present. In the absence of the President and Vice-President, no meeting shall be held unless an officer has been duly appointed by the President or the Vice-President to chair the meeting.

SECTION 3 - ELECTION: The officers shall be elected at the annual meeting of the General Council and shall serve three year staggered terms. Nominations shall be made from the floor. Election shall be by secret ballot. No absentee ballots shall be allowed. Officers shall be elected one at a time. When during the course of any General Council meeting, any presently serving officer shall be elected to fill any other position on the Business Committee, the position vacated by the election shall be immediately filled by electing another qualified person to the remainder of the term of the vacated position.

SECTION 4 - QUALIFICATIONS: Any enrolled member who maintains permanent residence within the Reservation boundaries, is present at the election, and is entitled to vote in the General Council, shall be eligible to be elected as an officer of the Nation, provided that no more than one brother, sister, father, mother, husband, wife or child of any person already serving as an officer may be elected as an officer. Officers moving their residence outside the boundaries of the Reservation during their term of office will be considered to have resigned from the Business Committee.

SECTION 5 - REMOVAL: (a) Any officer who is absent from three consecutive regular Business Committee meetings without an excuse acceptable to the Business Committee or who commits acts in violation of his position of trust as an officer of the Quinault Nation shall be removed from office. (b) Prior to removal pursuant to (a) above, the officer whose removal is contemplated shall be given a reasonable opportunity to answer charges and a written statement of the charges against him shall be made available to him fifteen (15) days prior to said meeting. (c) An officer who has been removed shall have the right within thirty (30) days to file an appeal to the General Council. In the event of such an appeal, the Business Committee shall promptly call a special meeting of the General Council, at which special meeting, it shall be decided whether the removed officer shall be permanently removed. Failure to obtain a quorum of the General Council at such a special meeting shall be considered affirmation of removal of any officer. -

SECTION 6 - RECALL: Any officer may be removed for any reason by vote of the General Council on a recall petition, specifying the reasons for removal. A recall petition shall be signed by at least fifty (50) qualified voters, and filed with the Business Committee. Upon the filing of such a petition, the Business Committee shall promptly call a special meeting of the General Council. Written notice of the petition shall be given to the officer at least fifteen (15) days prior to the meeting, and he shall be entitled to state his case before the General Council. The decision of the General Council shall be final. Failure to obtain a quorum at such a General Council meeting shall require the dismissal of the recall petition and no new recall petition may be filed against the officer in question for a period of one year following said meeting.

SECTION 7 - VACANCIES: Vacancies on the Business Committee shall be filled no more than sixty (60) days following the occurance of a vacancy by a 2/3 vote of a quorum of the remaining officers; provided that such appointee is a voting member of the Nation and is otherwise qualified. The vacancy shall be filled by election at the next General Council meeting for the remainder of the existing term. No person not elected to the Business Committee by the General Council shall be appointed to the position of President or Vice-President.

SECTION 8 - MEETINGS: Regular open meetings of the Business Committee shall be held at least once in each month on a regular schedule set by the Business Committee. Special meetings may be called on a reasonable notice to all officers. Executive sessions of the Business Committee may be held on majority vote of the Committee. All regular meetings shall be held within the boundaries of the Quinault Reservation.

SECTION 9 - BY-LAWS: The Business Committee shall by ordinance adopt its own procedures and duties of officers, except as herein provided.

ARTICLE V - POWER AND RESPONSIBILITIES OF THE BUSINESS COMMITTEE

SECTION 1 - GENERAL: It shall be the duty of the Business Committee to govern all people, resources, lands, and waters under the jurisdiction of or reserved to the Quinault Nation in accordance with this Constitution, the Quinault Tribal Code of laws, the Quinault Treaty, the laws of the United States expressly limiting the powers of the Quinault Nation, and the instructions of the General Council. Any rights, powers and authority expressed, implied, or inherent vested in the Nation but not expressly referred to in this Constitution shall not be abridged by this Article, but shall be exercised by the Business Committee or the General Council by the adoption of appropriate ordinances and agreements.

SECTION 2 - LAWS: The Business Committee shall have the power to enact laws for the welfare of the Nation; provided, however, that such laws are not in conflict with this Constitution, and that public hearings be held on each such law prior to their adoption.

SECTION 3 - POWERS: The Business Committee shall have the power: (a) To enter into agreements on behalf of the Nation with federal, state, and local governments or agencies, and other public and/or private organizations or persons; provided, that these agreements are not in conflict with this Constitution, the instructions of the General Council, or the laws of the Quinault Nation. (b) To provide for the execution and enforcement of the laws of the Quinault Nation; and to establish an independent Tribal Court, and to provide by law for its jurisdiction, procedures, and appointment or election of its judges; and to charter and regulate associations, corporations for profit and not for profit, towns, special districts, schools, religious institutions, financial institutions and all other entitities; and to establish National enterprizes as branches of the National government. (c) To levy and collect taxes on members and other persons or entities within the National jurisdiction; provided that no tax shall be levied on trust real property; further provided that no tax shall be levied without holding public hearings convenient in time and place to all members of the Quinault Nation and those subject to its jurisdiction; to determine the need for, and effect of, such a tax. (d) To assert the defense of sovereign immunity in suits brought against the Nation and to waive the said defense by agreement where National realty or personalty not held in trust by the United States is pledged or when property held in trust by the United States is pledged with the consent of the United States. (e) To govern the sale, disposition, and lease of tribally owned assets, and to provide for the zoning and other land use regulation of all lands within the boundaries of the Reservation and the jurisdiction of the Quinault Nation; and for the purity, volume, and use of all water to which the Quinault Nation and the Quinault people are entitled; and for the purity of the air within the Quinault Reservation. (f) To manage, lease, permit, sell, or otherwise deal with tribally owned lands, tribally owned interests in lands, water rights, fishing stations, mineral rights, hunting grounds, fish and wildlife resources; or other tribally owned assets, and to purchase or otherwise acquire lands or interests in lands within or without the Reservation, and to hold those lands in tribal or federal trust and to regulate allotted trust and non-trust lands within the Reservation boundaries insofar as such regulation is not prohibited by federal law and does not violate the rights of owners; provided, that tribally owned lands held in trust by the United States shall not be sold or encumbered unless authorized by the General Council. The authority to manage National lands and timber may be delegated to a special committee or committees. (g) To engage in any business that will further the economic well being of the Nation and of the members of the Nation, or undertake any program or projects designed for the economic advancement of the people or the Nation; and to regulate the conduct of all business activities within Reservation boundaries. (h) To borrow money from the federal government or other sources, to direct the use of such funds of productive purposes, and to pledge or assign chattels or income due or to become due. (i) 1--To administer any funds within the control of the Nation in accordance with an approved National budget; to make expenditures from available funds for tribal purposes including salaries and expenses of tribal employees or officials. 2--The Business Committee shall prepare an annual Nation budget. 3--This budget shall include all normal operating expenses, any special projects or expenditures contemplated by the Nation. 4--All expenditures of tribal funds by the Business Committee shall be authorized by it or by the General Council in legal session and the amounts so expended shall be a matter of public record. 5--The Business Committee shall have authority to approve amendments to the Nation's annual budget for special appropriations in any budget year. 6-- The approved budget shall be posted at the National Business Office in Taholah, Queets, and the Post Office in Taholah. (j) To provide for an escheat in order that real and personal property of members who die intestate and without heirs shall revert to the Nation. (k) To manage, protect and preserve the wildlife and natural resources of the Nation and to regulate hunting, fishing, including shellfishing, and trapping within the jurisdiction of the Nation. This power may be delegated to a special committee or committees. (l) On petition fifty (50) voting members of the Nation or on its own motion, the Business Committee shall, within a reasonable time, hold a general membership election by secret ballot on any issue. (m) All officers and employees of the Nation who have possession of tribal funds shall account for same periodically to the Business Committee. All officers and employees handling National funds shall be bonded. There shall be an annual audit of all National funds handled by National officers or employees to be performed by the Bureau of Indian Affairs or Certified Public Accountants. (n) To condemn land or interest in lands for public purposes within the boundaries of the Reservation; provided that owners of the lands condemned shall be paid the fair market value of such lands and any timber or buildings theron. (o) To exact all laws which shall be necessary and proper for carrying into execution any power delegated to the Business Committee or delegated to any person or committee under the supervision of the Business Committee. (p) To govern the inheritance of real and personal property owned by members.

ARTICLE VI - RATIFICATION

This Constitution shall go into effect when ratified by two thirds (2/3) of all members eligible to vote, present and voting at a General Council meeting at which a debate and vote on this Constitution has been placed on the agenda. All enrolled members of the Quinault Nation shall be notified of such a General Council meeting at least thirty (30) days prior to such a meeting, and the notice provided shall make specific reference to the proposed ratification of this Constitution. Election of officers provisions shall not take effect until the annual meeting of the General Council following the adoption of this Constitution.

ARTICLE VII - AMENDMENT

SECTION 1: This Constitution may be amended by a two thirds (2/3) vote of a quorum of the General Council at an annual or special meeting, provided, however, that the notice of the meeting at which an amendment is proposed shall be given at least thirty (30) days before the meeting, and shall set forth the proposed amendment and an explanation thereof; and provided further that after discussion of the amendment at the meeting there shall be a recess of at least 30 minutes to enable the members to further discuss the amendment among themselves.

SECTION 2: The Business Committee shall call a meeting to consider a proposed amendment upon its own motion, or upon receipt of a petition signed by fifty (50) voting members or upon resolution of the General Council.

ARTICLE VIII - ENFORCEABILITY

The provisions of the Constitution shall be enforceable exclusively in the Quinault Tribal Court and in the Federal Courts of the United States where provided by federal law, and shall not be enforceable in any other Court, except where the Quinault Tribe brings suit in its own name in any other court. This section shall not be interpreted as a consent to suit or waiver of sovereign immunity by the Quinault Indian Nation.

ARTICLE IX - APPROVAL OF SECRETARY OF INTERIOR

.The Secretary of the Interior shall have the power to review actions taken pursuant to the herein named powers and all other National powers, but only in those cases and only to the extent that the Secretary has been given such powers of review by express statutory command of the Congress of the United States.

ADOPTED MARCH 22, 1975.

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QUINAULT NATION TRIBAL HERITAGE SUMMARY REPORT
Date: 08/22/88     Total Members:        1711
===================================================================
Tribal heritage summary for individuals on the 1978 roll of the
Quinault Nation.
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SAMPLED

2203 Enrolled

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                                  Percentage   Average Quantum
 Tribal Heritage          Number  of Members   (Proportion)
#################################################################
*   Quinault          *      734 *    42.899   *     0.08764 *
*   Queets            *        5 *     0.292   *     0.00073 *
*   Hoh               *      335 *    19.579   *     0.03295 *
*   Quileute          *      491 *    28.697   *     0.06762 *
*   Chehalis          *      955 *    55.815   *     0.07812 *
*     Lower           *      142 *     8.299   *         --- *
*     Other           *      889 *    51.958   *         --- *
*   Chinook           *     1084 *    63.355   *     0.10888 *
*   Cowlitz           *      177 *    10.345   *     0.00952 *
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Other heritage for members of the Quinault Nation

 Tribal Heritage       Number
##################################
* Ozette              *        0 *
* Makah               *       60 *
* Klallam             *      128 *
* Skokomish           *      257 *
* Squaxin             *      274 *
* Nisqually           *      244 *
* Puyallup            *      349 *
* Puget Sound         *      191 *
* Yakima              *      243 *
* Other US Indian     *      347 *
* Canadian Indian     *      221 *
* Non-Indian/Unknown  *     1574 *
##################################
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[redacted]

B

FILE COPY
Surname:

INDIAN
Dwight
Larkin
Wheat
Woehlke
Flickinger
Zimmerman
Flanery

THE SECRETARY OF THE INTERIOR
WASHINGTON

MAY 22 1947

8-12-47

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INTERIOR DEPT.
MAY 20 1947
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MAIL CENTER

My dear Mr. Welch:

Rewritten-Solicitor's Office

Reference is made to your request for a report on H. R. 734, a bill "To amend the Act of February 12, 1925, and for other purposes."

I recommend that H. R. 734 be enacted.

The suit referred to in H. R. 734 was brought in the Court of Claims by the Quinaielt Tribe pursuant to the Jurisdictional Act of February 12, 1925 (43 Stat. 886). The tribe sued to recover the value of lands lost as a result of an erroneous survey of the northern boundary of the Quinaielt Reservation. In defense of the action the United States contended, among other things, that the Quinaielt Tribe was not entitled to recover the value of the lands excluded from the reservation by the erroneous survey for the reason that Indians of other tribes were entitled to interests in the reservation lands. The United States further contended that the Quinaielt Tribe was not authorized by the jurisdictional act to represent these other tribes, and that any claim asserted in their behalf came too late since the period of time described by the jurisdictional act for the filing of petitions had long since expired.

In an interlocutory decision handed down February 5, 1945 (102 Ct. Cls. 822) the court found that a considerable area of land had been excluded from the reservation by the erroneous survey. The court further found that the Quinaielt Indians did not have exclusive rights in the reservation and that the "Quillehutes, Hohs, Quits, Chehalis, Chinook, and Cowlitz Tribes" were also entitled to an interest in the reservation. The court pointed out that the proof failed to show what part of the value of the lands, if any, the Quinaielt Tribe is entitled to recover, and reserved judgment for further proceedings under Rule 39(a).

H. R. 734 designates the Quinaielt Tribe as the proper party plaintiff to prosecute the pending action to a conclusion on behalf of all the Indians entitled to an interest in the Quinaielt Reservation as established under the Treaty of July 1, 1855, and January 25, 1856 (12 Stat. 971), the Executive Order of November 4, 1873, and any subsequent acts of Congress. It would also authorize and direct the Court of Claims to ascertain what attorney or attorneys have performed services for the Indians of the Quinaielt Reservation in the aforesaid action. H. R. 734 also provides that the amount of the judgment,

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less the amount deductible for attorneys' compensation and the amount deductible for necessary and proper expenses, shall be deposited in the Treasury of the United States to the credit of the Indians having rights in the Quinaielt Reservation as established under the treaty of July 1, 1855, and January 25, 1856 (12 Stat. 971), the Executive Order of November 4, 1873, and any subsequent acts of Congress.

The Quinaielt Reservation, located in western Washington, was established by Executive Order of November 4, 1873, issued pursuant to the treaty of July 1, 1855, and January 25, 1856, with the Quinaielt and Quillehute (Quileute) tribes (12 Stat. 971). The treaty provided, among other things, that the President might "consolidate" the Quinaielts and Quileutes and "other friendly tribes" whenever in his opinion the public interest and the welfare of the Indians would be promoted thereby. The Executive Order accordingly set aside a large tract of land for the use not only of the Quinaielts and Quileutes but also for the use of the Hohs, Quits "and other tribes of fish-eating Indians on the Pacific Coast." While the reservation lands were in course of allotment under the General Allotment Act of 1887 (24 Stat. 388), as amended, Congress enacted the Act of March 4, 1911 (36 Stat. 1345), by which the Secretary of the Interior was authorized and directed to make allotments on the reservation to members of the "Hoh, Quileute, Ozette, and other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute Tribes in the treaty of July 1, 1855, and January 25, 1856, and who may elect to take allotments on the Quinaielt Reservation rather than on the reservations set aside for these tribes." The allotments so provided for were to be made after allotments to the Indians on the reservation had been completed. The treaty, Executive Order, and act of Congress thus contemplated the consolidation with the Quinaielts of the members of several other fish-eating tribes. As stated by the United States Supreme Court in Halbert v. United States, 283 U. S. 753, 759:

> "That [referring to the Executive order of November 4, 1873] was a step towards consolidation. Other steps followed, one being that in 1905 the Indian Bureau began making allotments to members of all of these tribes. This work was carried on under the treaty, the executive order and the general allotment law, and it had progressed prior to the Act of 1911 to the point where over 750 allotments had been completed, more than half of which were to members of the various fish-eating tribes in that section other than the Quinaielt and Quillehute. It therefore was altogether appropriate at that time to speak of these other tribes as affiliated with the Quinaielt and Quillehute under the treaty."

The Quinaielts and Quileutes, parties to the treaty of 1855 and 1856, were first allotted on the reservation. The Hohs and Quits, specifically named in the Executive Order of 1873, were also allotted. In *Halbert* v. *United States, supra*, the court held that the Chehalis, Chinook and Cowlitz tribes were among those whose members were entitled to take allotments on the Quinaielt Reservation. Allotments thereafter were continued to members of these several tribes and to new-born children until the land available for allotment on the reservation was exhausted.

The reservation established by the Executive Order of November 4, 1873, has been known for all purposes from the beginning as the Quinaielt Reservation. Collectively the Indians having an interest in that reservation, including those of the blood of other tribes consolidated with the Quinaielts pursuant to the treaty, Executive Order and act of Congress may be regarded as one tribe. In this connection we invite attention to the Interior Department Appropriation Act for 1946 which contains an item appropriating $8,000 from "funds on deposit to the credit of the Quinaielt Indians, Washington," to meet the expenses incurred by counsel in the action now pending before the Court of Claims. This is definite recognition by the Congress that the present litigation is being conducted for the benefit of all Indians having rights on the Quinaielt Reservation and that it is proper to refer to the collective group regardless of tribal blood as the Quinaielt Indians. Accordingly, it would be altogether appropriate for the Quinaielt Tribe to prosecute the pending action to a finality in behalf of all Indians who may have an interest in the reservation.

The Act of February 12, 1925, *supra*, contemplates suits in the Court of Claims by a number of Indian tribes, many of whom are not affiliated with the Quinaielts in the treaty of 1855 and 1856. The act contains a provision limiting the fees of attorneys to not exceeding $25,000 under one attorneyship for each tribe. H. R. 734 would remove this limitation and provide for compensation to counsel on a quantum meruit basis not exceeding 10 per cent of the recovery. This is in conformity with the contract of employment approved by this Department on November 30, 1937, and it also conforms to the usual policy of the Congress and the Department with respect to compensation to be paid counsel for Indian tribes for services rendered before the Court of Claims.

Under date of July 31, 1946, this Department in its report on H. J. Res. 259 of the 79th Congress, a measure having the same general objective as H. R. 734, recommended adoption of a substitute draft. H. R. 734 is identical with the substitute so recommended except for the last proviso which would authorize the Quinaielt Tribe to amend its petition to conform to the provisions of H. R. 734 and of the Indian Claims Commission Act of August 13, 1946 (Public Law 726, 79th Congress). This addition would merely give express recognition to an authorization clearly implicit in the other terms of H. R. 734 as well as in the Indian Claims Commission Act, and is entirely unobjectionable to this Department.

The Bureau of the Budget has advised me that there is no objection to the presentation of this proposed report to your Committee.

Sincerely yours,

(Sgd) J. A. Krug

Secretary of the Interior.

Hon. Richard J. Welch, Chairman,
Committee on Public Lands,
House of Representatives.

PX#7 (Keep Depo.)

Jo 2/5/80

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United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:
Tribal Government

Memorandum

SEP 8 1975

(Copy to
1. Director
2. [illegible]

To: Portland Area Director

From: Commissioner of Indian Affairs

Subject: Quinault Constitution and Bylaws

The subject amended constitution and bylaws and related material which you forwarded to this office have been reviewed as you requested. A number of questions have been raised by the Superintendent of the Western Washington Agency, the Regional Solicitor, and by Ms. Helen Mitchell, Chairman of the Quinault Allottees Association concerning the document and its adoption. These questions include whether the tribe intended to submit an IRA constitution, whether the tribe is required to submit an IRA constitution, what the status of the tribal government is under the recently amended constitution and, finally, the legality of the March 22 election whereat the amendments were adopted.

In response to these questions, we have reached several conclusions. We do not agree that it is the intention of the tribe to adopt the amended constitution and bylaws to reorganize under Section 16 of the Indian Reorganization Act. There has been no request for Secretarial approval of the document, and other correspondence received in this office indicates that the tribal attorney specifically told the voters that it was not an IRA constitution. We, therefore, believe that the Quinault voters intended to adopt the revision under the same conditions that the 1922 constitution was adopted and that the revision is intended as an amendment.

Notwithstanding the above, we agree with the Area, the Regional Solicitor and the Superintendent, that the amended constitution and bylaws is inconsistent with Federal laws in some instances and contains a number of questionable provisions. We therefore, recognize the document as a medium through which the Quinault people elect their representatives and as a guideline for those representatives. We will recognize only those actions taken by the tribal representatives which are in concert with existing Federal law. This recognition should not be construed as approval or disapproval of any specific provision of the amended constitution and bylaws. Nor should it be construed to abrogate or any way affect the Secretary of the Interior's trust relationship with the Quinault Tribe. It should be noted that

[redacted]

CONSERVE AMERICA'S ENERGY

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although this is not an IRA constitution, the Quinault Tribe did not vote to reject the Indian Reorganization Act and, therefore, is entitled to its benefits and subject to its applicable provisions. Each action of the business committee that affects our relation to it should be studied to determine if the committee has the authority to take such an action under the amended constitution and bylaws, if the action taken is legal under Federal law and if the trust relationship is affected.

Although we do not have the details of the March 22 election which was held to amend the constitution, the information that we do have indicates that the election was held in the usual and accustomed manner and in concert with the 1922 Bylaws. Although there is no specific provision in the 1922 Bylaws, providing for amendment, the authority for doing so remains with the tribe. That authority was exercised in 1965 without question and it appears arbitrary to question it at this time.

Ms. Mitchell also asserts that it would have been proper to adopt a constitution under the Indian Reorganization Act. We recommended that the tribe take that course of action in 1965 and we continue to view that as the best course of action. Nevertheless, a substantial portion of the Quinault Tribe chose to amend the existing 1922 document rather than adopt one under the IRA, and we can find no fault with a tribe determining the nature of its organic document.

Regarding Ms. Mitchell's complaint that certain persons were allowed to vote illegally on the adoption of the constitutional amendment and that a quorum did not exist at the time of the vote, we understand that no Bureau personnel were present during the election, but that reports available to the Area Office indicate that the election was fairly held in the usual and accustomed manner. Notwithstanding the reports of some irregularities, they do not appear to be of such a nature or of a degree that it would justify our withholding recognition of the results.

As was the case in 1965, when the 1922 Bylaws were amended, we again would urge the Quinault Tribe to reorganize under the Indian Reorganization Act. In the event that the tribe decides to develop and submit such a constitution, we encourage the Agency and Area staff to assist as necessary.

Morris Thompson

United States Department of the Interior
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

JUL 22 1977

#34

Memorandum

To: Regional Solicitor, Portland

From: Acting Associate Solicitor
Division of Indian Affairs

Subject: Quinault Zoning Ordinance

The Quinault Tribe, through its attorneys, has requested our review of an opinion of your office, which has been implemented by the BIA's Portland Area and Field Offices, stating that logging companies engaging in timber activities on the Quinault Reservation need not comply with a Quinault Tribal Zoning Ordinance because the ordinance has not received Secretarial approval. See attachments hereto. The ordinance in question regulates the development of reservation lands by requiring individuals, firms and corporations to obtain land use permits from the Tribe prior to engaging in certain development activities on the Reservation. We understand that the Bureau has informed one logging company that it need not comply with the tribal ordinance "and that if the tribe attempts to curtail their operations, that the Bureau will consider supporting any action [they] take to enjoin the tribe from interfering in the logging of [the Walter Major Allotment]." We are also aware of the fact that there are outstanding timber contracts, for instance, between Mayr Logging Company and the BIA which may be in conflict with the Tribe's zoning ordinance. Our view on this matter is as follows.

First, the 1975 Tribal Constitution is a revision of the Tribe's 1922 By-Laws and by its terms does not require Secretarial approval for it to be effective. Since it is a revision of a pre-IRA constitution, Secretarial approval is not necessary under 25 U.S.C. § 476, even though the Quinault's are an IRA tribe. See Sol. Op. October 13, 1976, re: Crow Tribe an IRA Tribe operating under a non-IRA constitution. Second, the zoning ordinance does not require

Secretarial approval under the IRA for it to be enforceable by the Tribe. If the ordinance does not conflict with federal law (including those statutes which set forth the Secretary's responsibilities in administering and managing trust lands--tribal as well as allotted), then the ordinance is effective and should be so acknowledged by the Interior Department. Additionally, assuming that the ordinance is not violative of other federal law as noted above, future timber contracts should acknowledge the applicability of the ordinance and the need for compliance; present timber contracts should be amended accordingly. If such action constitutes a taking of an allottee's property, the Tribe's action may be affected by the Indian Civil Rights Act.

(Sgd.) [illegible] [illegible], Jr.

Attachments

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UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

MAR 18 1980

MEMORANDUM

To: Commissioner of Indian Affairs

Through: Assistant Secretary--Indian Affairs

From: Acting Associate Solicitor, Division of Indian Affairs

Subject: Petition of Quinault Allottees

This is in response to your request for our review of a petition submitted by 91 Quinault allottees asking the Secretary to call an election on the adoption of an appropriate constitution for the "Indians of the Quinault Reservation."

We have had this matter under consideration for some time. We have shared our initial views with counsel for the petitioners and for the Quinault Indian Nation. The attorney primarily responsible for this matter has met in person at length with the petitioners and their counsel to discuss our initial views in response to a further request of the petitioners. We have received and carefully reviewed the written comments submitted by both counsel. Based on our review, it is our opinion, as more fully described below, that the Secretary of Interior lacks the legal authority to grant the petitioners' request.

Before considering the present petition, it is essential to have some knowledge of the history of the Quinault Reservation. By the Treaty of July 1, 1855, the Quinault and Quileute Tribes ceded to the United States almost all of the lands they claimed. 12 Stat. 971. A provision of that treaty allowed the United States to remove these tribes from their original reservations and consolidate them with "other friendly tribes or bands." In 1873, President Grant signed an executive order setting the boundaries creating the present Quinault Reservation for the

Quinault, Quileute, Hoh, Quit, and "other tribes of fish-eating Indians" of coastal Washington. Executive Order of November 4, 1873; 1 Kappler, Indian Affairs Laws and Treaties 923 (1903). 1/

Pursuant to the Act of February 8, 1887 (24 Stat. 388), allotments were being made on the Quinault Reservation around the turn of the century. In 1911, Congress enacted an additional statute providing that Indians of other tribes who were "affiliated with" the Quinault and Quileute Tribes in the earlier treaties could receive allotments on the Quinault Reservation. *See* Act of March 4, 1911; 36 Stat. 1345. More specifically the statute provided that the Secretary of the Interior was:

> [D]irected to make allotments on the Quinaielt Reservation...under the provisions of the allotment laws of the United States, to all members of the Hoh, Quileute, Ozette, and other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute Tribes in the treaty of July first, [1855], and January twenty-third, [1856], and who may elect to take allotments on the Quinaielt Reservation rather than on the reservations set aside for these tribes: *Provided*, That the allotments authorized herein shall be made from the surplus lands on the Quinaielt Reservation after allotments to the Indians thereon have been completed.

By 1916 when all or almost all the grazing and agricultural lands on the reservation had been allotted, the allotment process came to a halt. The Bureau of Indian Affairs had concluded that the timber lands should not be allotted. The allotment process was resumed in the mid-1920's in the wake of the Supreme Court's decision in *United States v. Payne*, 264 U.S. 446 (1924). In *Payne* the Court

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1/ *See also* 2 J. W. Powell (compiled by C. C. Royce), *Eighteenth Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institute 1896-97* 808 (1899).

concluded that an unallotted Quileute was entitled to an allotment of "timbered lands capable of being cleared and cultivated." Id. at 449.

Initially, however, only Indians who had resided on the reservation and were enrolled there were granted allotments and further litigation resulted. See Solicitor's Opinion, D 40140, September 2, 1916. In 1931, the United States Supreme Court interpreted the 1911 allotment statute and held that an allotment applicant did not have to establish that he resided on the Quinault Reservation, or any of the smaller reservations established for any of the tribes which were affiliated with the Quinault Tribe, in order to be entitled to an allotment. Halbert v. United States, 283 U.S. 753 (1931). The court went on to find that the Chehalis, Chinook, and Cowlitz Tribes were among those whose members were entitled to take allotments within the Quinault Reservation.

Following the Supreme Court's decision in Halbert, the Department began again to make allotments on the Quinault Reservation, with the vast majority of them being made in the early 1930's. After the Indian Reorganization Act (IRA) was passed, the Indians on the Quinault Reservation failed to vote against the act so the IRA continued to be applicable to the reservation. The Indians on the reservation did not, however, adopt a constitution pursuant to Section 16 of the IRA (25 U.S.C. §476). Instead they continued to function under very simple bylaws adopted in 1922.

In 1947, Congress enacted a statute declaring the Quinault Tribe as the proper party to prosecute a case in the Court of Claims for land excluded from the reservation by an erroneous survey. See Act of July 24, 1947, 61 Stat. 416. The act states in part:

> [T]he Quinaielt Tribe is hereby declared to be the proper party plaintiff for the purpose of further proceedings...and for the purpose of prosecuting the action to a final conclusion on behalf of all Indians having rights in the Quinaielt Reservation as established under the treaty of July 1, 1855, and January 25, 1856 (12 Stat. 971), the Executive Order of November, 4, 1873, and any subsequent acts of Congress.

The statute was necessary because the Court of Claims had concluded in an action brought by the Quinault Tribe that other Indians had an interest in the reservation. 102 Ct. Cl. 822. The Court needed to determine the proper party plaintiff before it could proceed.

By letter of May 22, 1947, the Secretary of the Interior reported the Department's position on the proposed legislation. H.R. Rep. No. 671, 80th Cong., 1st Sess. (1947). The Secretary stated that it was "proper to refer to the collective group regardless of tribal blood as the Quinault Indians." Further, he concluded: "[c]ollectively the Indians having an interest in that reservation, including those of the blood of other tribes consolidated with the Quinaults pursuant to the treaty, Executive Order, and act of Congress may be regarded as one tribe."

On May 22, 1965, the Tribal Council of the Indians of the Quinault Indian Reservation adopted an amended version of their 1922 bylaws. By letter of July 20, 1965, the Associate Commissioner of Indian Affairs recognized those amended bylaws as the "governing document of the reservation community." On March 22, 1975, the Quinault Tribe adopted an amended constitution pursuant to the tribe's own election procedures. Although the constitution was adopted in an election governed by the tribe's rather than the Secretary's procedures, the Commissioner of Indian Affairs advised the Portland Area Director by memorandum of September 8, 1975, that the Department would recognize the amended constitution as a medium through which the Quinault people elect their representatives and as a guideline for those representatives. Since the election on the adoption of the constitution was not conducted pursuant to the IRA, the Department was not asked to approve the document. Indeed, the Commissioner's memorandum of September 8, 1975, specifically states that it is not to be construed as either approving or disapproving any specific provisions of the amended constitution; however, the existence of a governing tribal body is not disputed. United States v. State of Washington, 384 F. Supp. 312 (W.D. Wash., 1974), aff'd, 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976).

It is against this extremely complex legal and factual background which the petitioners' request must be considered. The allottees' petition states in essential part:

> The "Indians of the Quinault Reservation" namely the allottees and landowners, have never exercised their option to organize in accordance with IRA procedures...we petition the Secretary of the Interior to organize the "Indians of the Quinault Reservation" in accordance with federal law. This organization is to consist of original allottees and their descendents. We further petition the Secretary of the Interior to call for an election to adopt an appropriate constitution and bylaws.

The language of the petition is ambiguous in a number of respects and all of the petitioners' intentions are not clear. The central intention of forming a new government is, however, abundantly clear.

At the outset we are compelled to note the language of the petition requests the Secretary simply to call for an election on the adoption of an appropriate constitution and bylaws. The choice of this language was apparently based, at least in part, on recommendations from the Portland Area Office. This is unfortunate since neither the statute nor the regulations adopted under it authorize the Secretary to commit the Federal Government to an election on an as yet unwritten "appropriate" constitution. In the absence of a specific proposed constitution, a petition simply asking for an election on an "appropriate" constitution has no legal significance.

The Secretary's existing regulations do require, however, that the Department of the Interior cooperate with and offer advice and assistance to any "eligible group in drafting a constitution and bylaws." See 25 CFR 52.4. Since the petition did not attach a proposed constitution, it may be construed as a request for assistance in drafting such a governing document. The issue then becomes whether the petitioners are an "eligible group" within the meaning of the Secretary's regulations or represent such a group such that they would be entitled to assistance in drafting a constitution and, ultimately, voting to either adopt or reject it.

The Secretary's present regulations authorize him to call an election on a proposed constitution upon request by the tribal governing body, an authorized representative committee 2/ or upon "petition filed by

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2/ There is nothing before us to suggest that the petitioners are "authorized" or "representatives" of all the original allottees, their descendents and the Quinault landowners, all of whom are apparently to be included in the proposed organization according to the language of the petition.

at least one-third of the adult members of the group." *See* 25 CFR 52.5. The IRA itself does not mention petitions in connection with constitutions and bylaws under Section 16. It does, however, mention petitions in connection with Section 17 corporations. *See* 25 U.S.C. §477. The obvious inference is that if Congress had intended petitions to apply to the constitutional process also, it could easily have so provided. Since it did not so provide, it must not have intended for petitions in connection with the constitutional process. Indeed, the original regulations approved by the Secretary on August 20, 1935, and, therefore, the ones which would most clearly reflect the legislative intent of the act, do not mention petitions as a means of initiating an election on the adoption of a constitution. The regulations adopted in October 1935 and later published modified the original regulations slightly and did authorize the Secretary to call an election in response to a petition but *only* if a tribal council or representative committee did not exist or failed to act. *Amended Rules and Regulations for the Holding of Elections Under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984)*, 55 I.D. 355 at 356.

It would be erroneous to construe the Secretary's present regulations as authorizing petitions from one-third of the adult members of a group as a means of forcing a change against the will of the recognized leadership. There is nothing in the language of the IRA nor in its legislative history which would suggest that Congress intended to authorize elements within a tribe to circumvent an existing governing structure. On the contrary, it is beyond question that one of the essential purposes of the IRA was to strengthen tribal government. *Fisher v. District Court*, 424 U.S. 382 (1976), *rehearing denied*, 425 U.S. 926 (1976); *see also* S. Rep. No. 1080, 73d Cong., 2d Sess. 1 (1934).

At Quinault a tribal council does exist which Congress has recognized at least since 1947 as representing the Indians of the Quinault Reservation regardless of their original tribal ancestry. This has been reaffirmed at least twice since 1947 when Congress has transferred lands to the "Quinault Tribe of Indians." *See* Act of August 25, 1959 (73 Stat. 427) and Act of October 15, 1962 (76 Stat. 913).

Even if it is assumed that the petitioners have a right to petition for an election on the adoption of a new constitution which would supersede and encompass the present recognized tribal governing entity, the 91 signatures on the petition are not nearly sufficient for the Secretary to call such an election. The Secretary's regulations which are presently in effect (25 CFR 52.5) authorize the Secretary to call an election on the adoption of a constitution only upon a request from a tribal governing body, representatives committee or a "petition filed by at least one-third of the adult members of the group." The "group" constitutes all those who would be eligible for membership in the proposed organization because it is over that class of persons that the proposed organization would exercise its governmental authority. The Quinault Indian Nation presently consists of approximately 1,555 members. Based on our experience with other Indian tribes, we can assume that approximately half of these, or 778, would be adult members. Thus, under the interpretation most favorable to the petitioners, the one-third necessary to invoke any rights under the Indian Reorganization Act would be approximately 259 signatures.

But, the petitioners are seeking to have the Secretary of the Interior organize an even larger group, "the Indians of the Quinault Reservation," and that "this organization [is] to consist of original allottees and their descendents." According to the information provided by the Quinault Allottees Association through Dan Van Mechelen, who is also the spokesman for the petitioners, there are more than 12,000 Quinault allottees residing in over 30 states and in several foreign countries. Since all 12,000 allottees would apparently be eligible to be members, the better interpretation would be to require signatures from one-third of the 12,000 future members. While such an interpretation obviously places a very heavy burden on anyone seeking to organize an Indian tribal government through the petition process, it is not an unreasonable burden. It must be kept in mind that the result of this process is not a mere social or fraternal organization but a government with broad powers over that class of persons who are its members.

Of the 91 petitioners, 89 were recognized as eligible to vote in the election of April 13, 1935, on the question of whether to reject the provisions of the Indian Reorganization Act. 3/ According to the spokesman for the petitioners, the petitioners assert their present right to organize based in part on their belief that they constitute more than one-third of the 229 original voters in that election who are

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3/ Counsel for the Quinault Indian Nation advises that 21 of the petitioners are members of Quinault Indian Nation and 2 are members of other recognized tribes.

still alive. 4/ The petitioners' assertion is apparently based on an unwarranted and erroneous assumption that the voting list for the April 1935 election continues to have some operative legal effect in 1980. The fact that the present petitions are signed by more than one-third of the surviving eligible voters of the 1935 election is of absolutely no legal significance today.

The theory of the petitioners relies on the provisions of the IRA which authorize the Secretary to organize the Indians of a reservation without regard to their prior tribal affiliation. They argue that since they, as allottees, were recognized as eligible voters in the April 1935 election on the rejection of the Indian Reorganization Act, they are still indisputably Indians "of the reservation" for purposes of adopting a constitution under the IRA in 1980.

Some background on the 1935 election under Section 18 of the IRA on which the petitioners base their claim will be helpful. Section 18 of the IRA (25 U.S.C. §478) provides that the act will not apply upon any reservation "wherein" a majority of adult Indians voting at a special referendum vote against its application. Beginning in January of 1935, there was an exchange of letters between the Superintendent of the Taholah Indian Agency and the Commissioner and Assistant Commissioner of Indian Affairs in Washington concerning the right of absentees to vote on the application of the Indian Reorganization Act to the Quinault Reservation. By letter of February 13, 1935, the Assistant Commissioner responded to an inquiry from the Superintendent stating that "[t]hose who are admittedly and permanently absent should not be permitted to vote. However, it seems that it should be for the Indian to determine whether he expects to return and, if so, he should certify as required, and if this is done the vote should be counted." On March 14, 1935, in an effort to clarify further the situation, the Assistant Commissioner again wrote the Superintendent concerning the voting rights of absentee Indians of the Quinault Reservation. The Assistant Commissioner concluded:

> [t]hey should be given an opportunity to vote and required to furnish with their ballots a certificate as to their intention to return to the reservation. Failure to do so should disqualify them from voting. We believe that

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4/ Letter to Superintendent, Western Washington Agency, from Dan Van Mechelen, dated May 13, 1978.

> the Indian himself should decide as to his future residence and that we should not assume that because of his present absence from the reservation he has abandoned his affiliation with the tribes.

Finally, in what was to be the last word on the subject, Commissioner Collier notified the Superintendent of the Taholah Agency by memorandum of March 19, 1935, that residence for purposes of determining eligibility for voting on the application of the IRA could be actual or constructive. The Commissioner went on to instruct that in the case of constructive residence there must be a "certificate of the absentee voter that he is merely residing away temporarily and expects to return to the reservation."

The cover letter sent to the absent allottees emphasizes that the vote "places you under no obligation either to the government or the tribe as to returning to the community or reservation." Letter of March 26, 1935, from Superintendent Taholah Agency. Admittedly, a person who had in good faith an intent to return to the reservation could vote on the act and later change his mind and not return. The right to vote on the act was, however, dependent on having a present intent to return to the reservation. 5/

5/ *See* also letter of December 26, 1940, from Assistant Secretary Chapman to the Attorney General, which refers to both the March 14 and the March 19, 1935, letters and interprets them as stating that the absent allottees were allowed to vote after signing a certificate "stating that they intended to return to the reservation and considered it their legal residence."

In his June 14, 1976, memorandum to the Commissioner of Indian Affairs, the Associate Solicitor for Indian Affairs concluded in part: "[i]f the allottee...is a descendent of a tribal member and himself voted as a Quinault allottee on the Indian Reorganization Act, then that is a rebuttable presumption of their [the allottees'] reservation residency." The exchange of letters in 1935 referred to above was not considered by the Associate Solicitor in 1976. In light of those letters, I do not believe that the fact that allottees voted on the IRA raises the rebuttable presumption of reservation residence suggested by my predecessor.

The allottee's right to vote on the IRA as residents of the reservation was conditioned on their intention to return to the reservation. Apparently many of those allottees who voted on the IRA did not return to the reservation even though they may have intended to do so at the time they voted. We appreciate the fact that a practical matter many of the allotments on the Quinault Reservation may be unhabitable which explains why many of the allottees did not return to the reservation. That explanation is not, however, a substitute for the legal requirement of residence for members of a group being organized be residents of the reservation. It does not follow that the constructive residence in 1935 which was sufficient to entitle absent allottees to vote on the application of the IRA is sufficient "residence" in 1980 to entitle them to demand the right to organize. This is particularly true since the "constructive residence" of 1935 was based on an intention to return to the reservation, an intention which most of the allottees have not pursued.

Our earlier analysis of this matter included analysis of a number of additional theories since we viewed the language of the petitions as being subject to multiple interpretations. Our discussions with the petitioners, their counsel and counsel for the Quinault Indian Nation have clarified matters sufficiently that we consider the analysis of those issues unnecessary and speculative. Accordingly, it has not been included.

For all of the reasons set out above, we believe that you lack legal authority to grant the petitioners' request.

Hans Walker, Jr.

IN REPL

United States Department of the Interior
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

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INDIANS OF THE QUINAULT RESERVATION Appellant	:	ORDER DISMISSING APPEAL
v.	:	Docket No. IBIA 81-21-A
COMMISSIONER OF INDIAN AFFAIRS, Respondent	:	October 15, 1981

On October 15, 1981, the Board of Indian Appeals received a memorandum order entered by the Secretary of the Interior on October 8, 1981, assuming jurisdiction over the above-captioned appeal in accordance with authority reserved to the Secretary under 43 CFR 4.5. The Secretary's order instructs the Board to enter an order dismissing the above appeal stating that the matters at issue have been previously determined by the Office of the Assistant Secretary--Indian Affairs in a final Departmental decision. A copy of the Secretary's order of October 8, 1981, is attached.

Pursuant to the above order of the Secretary, the subject appeal is hereby dismissed.

Wm. Philip Horton
Chief Administrative Judge

Franklin Arness
Franklin D. Arness
Administrative Judge

Jerry Muskrat
Jerry Muskrat
Administrative Judge

Attachment

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rec'd 10/13/81

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 24

In Re Appeal of Indians of the Quinault
Reservation v. Commissioner of Indian Affairs,
IBIA 80-21-A

DECIDED

The Interior Board of Indian Appeals lacks jurisdiction to decide the appeal of the Indians of the Quinault Reservation in that the present appeal arises out of the same essential facts and laws previously the subject of a decision by the Office of the Assistant Secretary for Indian Affairs.

DECISION BY THE SECRETARY

Chronological Background

In 1978, 91 allottees from the Quinault Reservation petitioned the Secretary of the Interior requesting that the Secretary call an election to adopt a constitution for the "Indians of the Quinault Reservation." The request was reviewed by the various offices of the Bureau of Indian Affairs and eventually referred to the Associate Solicitor, Indian Affairs, for a review of the legal issues raised by the petition. On March 18, 1980, the Acting Associate Solicitor issued a memorandum analyzing the request and concluding that the Secretary lacked the authority to grant the petitioners' request. After noting that the petitioners had not submitted a proposed draft constitution in connection with their request, the Acting Associate Solicitor went on to construe their request as one for assistance in drafting such a document pursuant to 25 CFR 52.4.

By letter of April 7, 1980, the Commissioner of Indian Affairs advised the spokesman for the petitioners that he was denying their request. After receiving the Commissioner's letter, counsel for petitioners made a telephone inquiry as to the effect of the decision. In a separate letter of June 5, 1980, to the Secretary, the spokesman for the petitioners sought clarification of his right of appeal from the Commissioner's decision and asked that his letter be construed as an appeal. On July 2, 1980, the Acting Deputy Assistant Secretary of Indian Affairs responded to the appeal letter and the telephone inquiry stating that the Commissioner's decision was final for the Department and that there was no further administrative appeal process within the Department.

The present appeal arises from the Commissioner's December 8, 1980, denial of a request submitted by letter of November 4, 1980, for technical assistance by the same spokesman for the same organization called the "Indians of the Quinault Reservation." The Commissioner's December denial called attention to his April 7, 1980, decision on the same matter. After initial briefing, the Board denied the motion of the Commissioner of Indian Affairs to dismiss and set a schedule for addressing the merits of the appeal.

Secretarial Decision

Pursuant to the authority I have reserved to myself in 43 CFR 4.5 and 200 Departmental Manual 1.9, I am taking original jurisdiction over the appeal presently pending before the Interior Board of Indian Appeals in order to avoid a possible conflict between a decision of the Board and a decision which is a prior decision of the Office of the Assistant Secretary of Indian Affairs over which the Board has been given no jurisdiction. The matter presently pending before the Board is one which involves the same subject matter and is raised by the same parties involved in the previous decision by the Commissioner and Acting Deputy Assistant Secretary. I have concluded, therefore, that it involves a decision by the Office of the Assistant Secretary--Indian Affairs, decisions from which the Board has been given no jurisdiction. Accordingly, I find that the Board has no jurisdiction to consider this appeal further and remand the case to the Board with instructions to dismiss the appeal.

Basis for the Decision

The original decision of the Commissioner was based on the March 18, 1980, memorandum from the Acting Associate Solicitor, Indian Affairs. After noting that the "Indians of the Quinault Reservation" were requesting that the Secretary authorize the calling of an election on a constitution which did not exist, the Acting Associate Solicitor went on to construe the request as being one for assistance in the drafting of such a constitution.

Similarly, the appeal presently pending before the Board arises out of the Commissioner's December 8, 1980, denial of a renewed request for technical assistance. The appellant's November 4, 1980, letter, which is the basis for the present appeal, is by its own terms a "re-affirmed" request for assistance and refers to the initial request made on March 24, 1980, or two weeks before the Commissioner's decision.

Not only are the subject matter and parties of the present appeal the same as those which were before the Commissioner and the Acting Deputy Assistant Secretary in 1980, but also all essential facts and legal arguments in connection with that subject were more than adequately analyzed prior to the Commissioner and Acting Deputy Assistant Secretary making their earlier decisions. In addition to numerous discussions and meetings with the Department's representatives, the underlying legal and factual analysis contained in the March 18, 1980, memorandum of the Acting Associate Solicitor was circulated for comment to the petitioners and their counsel as well as to the Quinault Indian Nation and its counsel. The subject matter and the parties in this proceeding are the same as those involved in the administrative review before the Commissioner and Acting Deputy Assistant Secretary in the spring of 1980. The parties have had an adequate opportunity to comment and be heard on this matter previously. Accordingly, since the decision of the Commissioner was affirmed on appeal by the Acting Deputy Assistant Secretary, there is no jurisdiction for a further review of this matter by the Board. The Board is instructed to dismiss its review of this matter.

James G. Watt

Secretary of the Interior

United States Department of the Interior

OFFICE OF THE SOLICITOR
Portland Region
Lloyd 500 Building, Suite 607
500 N.E. Multnomah Street
Portland, Oregon 97232

Rec'd 7/7/80 dK

In reply refer to:
JUN 27 1980

Mr. Dan Van Mechlen
20400 Second SW
Seattle, Washington 98166

Dear Mr. Van Mechlen:

This is in response to your letter dated May 15, 1980, wherein you sought my comments on two subjects you raised; the first relating to recognition of the Quinault Tribe as the governing body of the Quinault Reservation, the second regarding the Indian Reorganization Act of 1934. The following thoughts are offered for your consideration.

As to recognition of the Quinault Tribe, and through it the Quinault Tribal Business Committee, as exercising powers of government for the Quinault Reservation, much of the history of this situation is found in the March 18, 1980 memorandum of the Acting Associate Solicitor, Indian Affairs regarding the petition of the Quinault Allottees. In addition to those acts of Congress referred to in your letter, which I had mentioned at our meeting, various other acts of Congress make reference to the Quinault Tribe and its relation to the Quinault Reservation. In addition to annual appropriation acts, these include the Resolution of March 8, 1859, 12 Stat. 971 (ratification of treaty); Act of March 4, 1911, 36 Stat. 1345 (allotment of other Indians affiliated with Quinault Tribe); and the Act of May 27, 1965, 79 Stat. 118 (distribution of judgment funds). It should also be noted the reference in your letter to a 1961 act is actually the Act of October 15, 1962, 76 Stat. 913.

Initially, the reservation was governed under bylaws adopted in 1922. These bylaws, adopted by the members of the Quinault Tribe of Indians of the Quinault Reservation, established a tribal council comprised of all adult members of the Quinault Tribe of Indians. It further created a business committee to represent the Indians of the reservation in matters arising between the sessions of the council. I am advised that at the time of the election on the applicability of the IRA on the Quinault Reservation, the Quinault Tribal vote was against application, but the allottee vote in favor of application was greater, so the act applies. The failure of the Indians on the reservation to adopt a constitution pursuant to §16 of the IRA (25 U.S.C.A. §476) may be

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interpreted as indicating allottee satisfaction with the then existent form of government, i.e., the Quinault Tribe.

While it is true that the 1947 act (61 Stat. 416) to which you referred was for the specific purpose of authorizing the Quinault Tribe to prosecute an action pending before the Court of Claims, the act also is indicative of Congressional recognition that the Quinault Tribe represented all the Indians on the reservation. Furthermore, while it may have been a Pyrrhic victory, the court did in fact find for the Tribe and awarded the value of the timber taken in 1897, plus interest, for a total of $87,988.68, but then under the jurisdictional act of 1925 proceeded to allow set-offs presented by the United States in a total of $87,995.62, 118 Ct. Cl. 231. The 1959 and 1962 acts (Act of August 24, 1959, 73 Stat. 427; Act of October 15, 1962, 76 Stat. 913 restored lands to the reservation to be held in trust for the governing body, i.e., the Quinault Tribe, as opposed to individuals.

You further state that Scott Keep's memo is one man's opinion, and based on misinterpretation of fact. To the contrary, what we have referred to as the "Scott Keep" memo is simply a shorthand method of referring to the memorandum of March 18, 1980 of the Acting Associate Solicitor, Indian Affairs. Therefore, that memorandum, in conjunction with the Commissioner of Indian Affairs' letter of April 7, 1980, is the official position of the federal agency charged with the administration of Indian affairs. As such, the interpretations therein are given great weight by the courts, United States v. Jackson, 280 U.S. 183, 193 (1930). The same is true regarding your reference to federal regulations written by bureaucrats. In any event, it is the executive branch of government that has the power to recognize tribal governments, United States v. 43 Gallons of Whiskey, 93 U.S. 188 (1876). The bottom line may well be that how recognition occurred is unimportant, what is important is the fact that recognition of the Quinault Tribe did in fact occur and is continuing.

As to the second subject you raise in your letter, relating to the word "now" in the IRA definition of Indian as meaning 1934, I am not at all clear on what your question or point is. The only "now" I find in 25 U.S.C.A. §479 in defining Indian states "all persons of Indian descent who are members of any recognized Indian tribe now under federal jurisdiction. . . ." The "now" refers to recognized tribes under federal jurisdiction, which included the Quinault Tribe of Indians. If your point relates to the language in the "Scott Keep" memo finding that the group that would need to petition for a section 16 constitutional election is larger than the original allottees, your position in this regard seems clearly wrong for at least two reasons. First, the law is a dynamic field; things are never frozen in place, but rather must be related to the current situation. Your line of reasoning in this regard as applied to amending the United States Constitution would result in only 3/4 of the original thirteen states as being necessary to ratify an amendment, as opposed to 3/4 of the present number of states. Secondly, reading section 17 and section 16 in para materia, it is clear the IRA does not envision there being more than one government on an Indian reservation. In fact, this has been the case since at least the Act of May 17, 1882, 25 U.S.C.A. §63, which authorized the President to consolidate one or more tribes within a reservation.

If I may be of further assistance, please advise.

Very truly yours,

For the Regional Solicitor

Dale H. Itschner
Assistant Regional Solicitor
Pacific Northwest Region

cc: Chris Carlson

bcc. Scott Keep

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

12/3/84

NOV 28 1984

Joseph B. DeLaCruz, President
Quinault Indian Nation
P.O. Box 189
Taholah, Washington 98587

Dear President DeLaCruz:

Secretary Clark has asked me to respond to your letter to him of November 2 concerning the decision of the Ninth Circuit Court of Appeals in Williams v. Clark.

Given the complex history of the Quinault Reservation as well as that of many of the tribes of the Northwest, I can appreciate the concern of the Quinault Indian Nation about some of the language in the decision. I believe your concerns are based, however, on an overly broad reading of the decision. I am convinced that the holding of the Ninth Circuit can, and indeed must, be construed narrowly. The court's holding is limited to the facts and law at issue in the case. That holding is simply that the Quileute Tribe had sufficient interest in the Quinault Reservation to make the devise of an allotment on the Quinault Reservation by one Quileute to another proper within the meaning of Section 4 of the Indian Reorganization Act (IRA) (25 U.S.C. § 464).

When the Department reviewed this matter initially in probating the estate of Joseph Willessi, it reached a different conclusion than that reached by the Ninth Circuit. I cannot say, however, that the court's decision is clearly wrong on the law. Nor is it in conflict with any decision on the same issues by another federal court of appeals. The case involves the interpretation of a single statutory provision, Section 4 of the IRA. That statute has now been amended so that persons in the position of Mr. Williams are proper devisees under the express terms of the statute. The issue decided by the Ninth Circuit is now essentially moot. I believe, therefore, there is almost no chance of our getting the Supreme Court to consider it.

Indeed, to get the Supreme Court to consider this case, the United States would, in effect, have to argue against the best interests of the Quinault Indian Nation. We would have to argue that the actual holding of the case was broader and carried more drastic consequences than I believe is justified by a careful reading of the decision. If the Court then denied the petition, the United States would have gone on public record as construing the holding of the case to have broad consequences. This would provide support to those who may be seeking to attack the jurisdiction of the Quinault Indian Nation.

I cannot, therefore, recommend to the Department of Justice that it seek certiorari. The decision in Williams does not change the Department's basic view that the Quinault Indian Nation is the Indian governing body for the Quinault Reservation. We are prepared to work with the Nation to defend that position.

Sincerely,

Mary Walker

for Frank K. Richardson
Solicitor

No. 84-943

In the Supreme Court of the United States

OCTOBER TERM, 1984

ESTER ELVRUM, ET AL., PETITIONERS

v.

LEO WILLIAMS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE SECRETARY OF THE INTERIOR IN OPPOSITION

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J

QUESTION PRESENTED

Whether the Quileute Tribe has a sufficient property interest in the Quinault Reservation to qualify as a reservation tribe for the limited purposes of a now superseded version of Section 4 of the Indian Reorganization Act, 25 U.S.C. (1970 ed.) 464.

Page

Treaty, statutes and regulation—Continued:

Indian Reorganization Act, 29 U.S.C. 461 *et seq.* 4
  § 4, 25 U.S.C. (1970 ed.) 464 .... 1, 2, 4, 5, 6, 7, 9
  § 16, 25 U.S.C. 476 .... 4, 7

Pub. L. No. 96-373, § 1, 94 Stat. 1207 2

Miscellaneous:

Exec. Order of Nov. 4, 1873, *reprinted in*, 1 C. Kappler, *Indian Affairs, Laws and Treaties* (1904) 3, 5

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A28) is reported at 742 F.2d 549. The opinion of the district court (Pet. App. B1-B5) is unreported. The opinion of the Interior Board of Indian Appeals (Pet. App. C1-C36) is reported at 8 I.B.I.A. 295.

JURISDICTION

The judgment of the court of appeals was entered on September 11, 1984. The petition for a writ of certiorari was filed on December 10, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

Section 4 of the Indian Reorganization Act as it stood at the time of the controlling events in this case, 25 U.S.C. (1970 ed.) 464, provided in relevant part:

[N]o * * * devise * * * of restricted Indian lands * * * shall be made or approved: *Provided, however*, That such lands or interests may, with the approval of the Secretary of the Interior, be * * * devised * * * to the Indian tribe in which the lands * * * are located * * *; and in all instances such lands or interests shall descend or be devised in accordance with the then existing laws of the State * * * in which said lands are located * * * to any member of such tribe * * * or any heirs of such member * * *.

STATEMENT

1. This litigation arises from the disapproval, by the Interior Board of Indian Appeals (IBIA), of the residuary clause in the will of Joe Willessi, a Quileute Indian. Willessi sought to devise his interest in an allotment of trust lands on the Quinault Reservation to another Quileute Indian, respondent Leo Williams. Although Willessi's will was originally approved in probate proceedings within the Department of the Interior, those proceedings were timely reopened in 1978 by petitioners, Willessi's heirs-at-law. Petitioners argued that the devise of the allotment on the Quinault Reservation to Williams was inconsistent with the restrictions on testamentary disposition of such lands imposed by Section 4 of the Indian Reorganization Act (IRA), 25 U.S.C. (1970 ed.) 464, because the respondent was neither an heir of the testator nor a member of the Quinault Indian Nation.[1] The central issue in the reopened administrative probate proceeding, and in the courts below, was whether, for the special purposes of Section 4 of the IRA, the Quileute Tribe had a sufficient interest in the Quinault Reservation to validate a devise of an interest in allotted trust lands located on the Quinault Reservation

from one Quileute Indian to another Quileute who is neither the testator's heir nor lineal descendant.

2. The interests of Quinault and Quileute Indians in the Quinault Reservation may be traced through more than 100 years of federal tribal relations. In 1855, the United States entered into treaty negotiations with representatives of the Quinault, Quileute, Chehalis, Cowlitz, Chinook, and Quit Indians. The Quinault and Quileute Tribes relinquished all of their prior claims to land in the Olympic Peninsula and agreed to relocate to "a tract or tracts of land sufficient for their wants." Treaty of Olympia, July 1, 1855, art. II, 12 Stat. 971. In 1873, a 200,000-acre reservation was established by executive order "in accordance with the [Treaty of Olympia] * * * and to provide for other Indians in that locality * * *." Exec. Order of Nov. 4, 1873, *reprinted in*, I C. Kappler, *Indian Affairs, Laws and Treaties* 923 (1904). The Quileutes, however, refused to accept this reservation and stressed that "their interpretation of the treaty was that they were to be given a reservation where they had always lived at the mouth of the Quillehute River" (*United States v. Moore*, 62 F. Supp. 660, 668 (W.D. Wash. 1945), aff'd, 157 F.2d 760 (9th Cir.), cert. denied, 330 U.S. 827 (1946)). Further negotiations ensued and, by executive order in 1899, the United States granted the Quileute Tribe a reservation of its own near La Push, Washington. I C. Kappler, *supra*, at 923. Thereafter, the larger 200,000-acre reservation became known simply as the Quinault Reservation.

Article VI of the Treaty of Olympia foreshadowed the allotment era in federal Indian law by allowing parcels of land on the Quinault Reservation "to be surveyed * * * and assign[ed] * * * to * * * individuals or families as a permanent home * * *" (12 Stat. 972). In *United States v. Payne*, 264 U.S. 446 (1924), this Court held that Article VI of the Treaty complements the General Allotment Act, allowing the allotment of timberland, as well as grazing or agricultural lands, on the Quinault Reservation. *Id.* at 448-449. Subsequently, in *Halbert v. United States*, 283 U.S. 753 (1931), the Court considered the Act of Mar. 4, 1911, ch. 246, 36 Stat. 1345-1346, which supplemented the General Allotment Act, authorizing

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[1] Section 4 was amended in 1980. See Pub. L. No. 96-363, § 1, 94 Stat. 1207. See page 9, *infra*. The amended statute is not at issue in this case; in probate matters, the IBIA applies the law in effect on the date of the testator's death.

> all members of the Hoh, Quileute, Ozette or other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute tribes in the [Treaty of Olympia, to] * * * elect to take allotments on the Quinaielt Reservation rather than on the reservations set aside for these tribes: *Provided*, [t]hat the allotments authorized herein shall be made from the surplus lands of the Quinaielt Reservation after the allotments to the Indians thereon have been completed.

In *Halbert* the Court held that non-Quinaults who wished to take allotments on the Quinault Reservation but who did not reside on the Reservation were entitled to avail themselves of this allotment authorization. 283 U.S. at 762.

Allotment on the Quinault Reservation was ended by the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. 461 *et seq.* Pursuant to a 1935 election, certain of the provisions of the IRA, including the restrictions on testamentary disposition in Section 4, were accepted on the Quinault Reservation. The Quinault Nation itself, however, chose not to adopt a formal constitution under Section 16 of the IRA, 25 U.S.C. 476, but has twice revised its 1922 by-laws and continues today as a sovereign "non-IRA" tribe. In contrast, the Quileute Tribe chose to reorganize and adopt a formal constitution pursuant to Section 16 of the IRA. Article I of the Quileute Constitution limits the Quileute's tribal jurisdiction to lands within the relatively small Quileute Reservation at La Push, Washington and to "such other lands, as may have been or may hereafter be added thereto" (E.R. 17). Article VII of the Quileute Constitution

describes the Tribe's powers over allotted lands and asserts power over allotments on the Quileute Reservation (E.R. 21).

3. In light of the special history of the Quileutes and Quinaults, the IBIA held that the Quileute Tribe did not exercise jurisdiction over the Quinault Reservation (Pet. App. C34). Because Section 4 of the IRA restricted devises of on-reservation trust allotments to members of the tribe "in which said lands are located," the IBIA concluded that the respondent, a member of the Quileute Tribe, could not take a trust allotment located on the Quinault Reservation (Pet. App. C1-C36). Respondent Williams filed an action for judicial review of the IBIA decision in the United States District Court for the Western District of Washington. The district court upheld the action of the agency (Pet. App. B1-B5).

The court of appeals reversed (Pet. App. A1-A28). The court held (*id.* at A15-A19) that the Quileute Tribe had property rights in the Quinault Reservation, traceable through the Treaty of Olympia and the implementing 1873 Executive Order, that qualified it as a "tribe in which the lands [devised to respondent Williams] are located" for the purposes of Section 4 of the IRA. The court of appeals concluded (Pet. App. A11-A14) that the legislative history of Section 4 of the IRA indicates that inheritance of restricted land was open to members of all tribes having property rights in a given reservation area.

ARGUMENT

While the judgment of the court of appeals is inconsistent with the result we urged below, we see no warrant for further review in this Court. The court of appeals' decision is exceedingly narrow: it merely holds that, for the purposes of a superseded version of Section 4 of the IRA, the Quileute Tribe has a sufficient property interest in the Quinault Reservation to allow its members to devise their trust allotments on that reservation to one another. Although the panel's opinion does contain unnecessary and ambiguous dicta concerning shared Quileute *jurisdiction* over the Quinault Reservation, the panel was generally careful to limit its holding to the question of devisability of Quileute *property* interests under the former language of Section 4 of the IRA. There accordingly is no occasion for this Court to address the broad jurisdictional issues on which petitioners seek a ruling.

1. Petitioners argue (Pet. 16-24) that the court of appeals failed to acknowledge, and defer to, the recognition by Congress and the Department of the Interior of the Quinault Nation as the governing body on the Quinault Reservation. We disagree. The court of appeals' decision does not disturb the federal government's longstanding recognition of the Quinault Nation's exclusive political jurisdiction on the Quinault Reservation. The court of appeals stated (Pet. App. A23-A24) that its decision was based on the property rights of the Quileute Tribe, which would remain unaffected "[e]ven if the Quinault Tribe's rulemaking power were exclusive * * *." There is no basis, moreover, for petitioners' assertion (Pet. 16-18) that the court of appeals decided a nonjusticiable political question; the Secretary's rulings applying Section 4 are plainly judicially reviewable under the Administrative Procedure Act. In determining the rights of members of the Quileute Tribe, for the limited special purposes of Section 4 of the IRA, the court of appeals did not and did not purport to — call in question the Executive Branch's recognition of the Quinault Nation. Cf. *Baker* v. *Carr*, 369 U.S. 186, 215-216 & n.43 (1962).[2]

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[2] Petitioners exaggerate (Pet. 19-20) the import of the court of appeals' assertion that it was empowered to review de novo all aspects of the IBIA's decision (Pet. App. A5). Despite this incautious language, the court of appeals actually devoted much of its opinion (Pet. App. A17-A22) to reciting congressional and executive branch actions regarding the Quinault Nation. Although the court ultimately minimized the weight to be accorded these past actions (Pet. App. A20-A21 n.4), the court of appeals simply did not ignore "the views of the United States" as the petitioners suggest (Pet. 20).

2. Petitioners also misportray the court of appeals' decision in an effort to demonstrate a conflict between the decision below and the Tenth Circuit's decision in *Southland Royalty Co.* v. *Navajo Tribe of Indians*, 715 F.2d 486 (10th Cir. 1983). *Southland Royalty* has no bearing on this case. That case involved neither Section 4 of the IRA nor the Quinault Reservation; rather, the Tenth Circuit held in *Southland Royalty* that the Navajo Tribe could tax oil and gas leases on its reservation without obtaining approval from the Secretary of the Interior. 715 F.2d at 489-490.

Petitioners argue (Pet. 29-33) that the court of appeals effectively stripped the Quinault Nation of its self-governing authority by suggesting that Secretarial approval of the Quinault's by-laws was required.[3] According to petitioners, this suggestion conflicts with the conclusion in *Southland Royalty* that non-IRA tribes need not obtain Secretarial approval of their tax laws. Although we share the petitioners' concern with the lack of clarity in footnote 5 of the Court's opinion, it is not even clear that the court of appeals meant to indicate that the Secretary's approval was needed to validate Quinault by-laws. See note 3, *supra*. At most, the passage of which petitioners complain may reflect the court's erroneous assumption that the Quinault Nation was required to reorganize under Section 16 of the IRA.[4]

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[3] The passage that gives rise to petitioner's concerns consists of the following sentence in a footnote in the opinion of the court below (Pet. App. A22-A23 n.5):

> We note also that the Quinault Indian Nation By-laws have not been approved by the Secretary of the Interior, although the IRA provision which permits tribes to adopt constitutions so requires.

[4] The court of appeals may have been confused by an erroneous statement in the IBIA's opinion suggesting that the Quinault Nation "adopted IRA organization in 1935" (Pet. C35). Compare page 4, *supra*. The court of appeals did not, in any event, state that the Quinault Tribe's by-laws are invalid.

But the footnote in question was merely an aside and the court of appeals plainly did not base its decision on any lack of self-governing authority in the Quinaults. To the contrary, the court explicitly stated (Pet. App. A22) that "*the Quinault Tribal Council's exercise of jurisdiction* * * * *to make and enforce rules* * * * does not foreclose the Quileute Tribe's property rights in the Quinault Reservation (emphasis added)." And the court underscored (*id.* at A24) that the Quileute's property rights, on which its ruling was based, could be recognized even if "the Quinault Tribe's rulemaking power were exclusive * * *." Thus the decision below in no sense conflicts with *Southland Royalty*.[5]

3. Petitioners seek certiorari primarily to explore a series of open ended questions which, as even they concede (Pet. 38-40), the court of appeals did not address. These questions arise from the court of appeals' brief reference (Pet. App. A27-A28 & n.8) to shared Quinault-Quileute "jurisdiction" on the Quinault Reservation. In the context of this case, however, the allusion to Quileute jurisdiction — which was not necessary to the result below — does not warrant further review.

As discussed above, the court of appeals' decision rests upon its assessment of the historic property rights of the Quileute Tribe on the Quinault Reservation. The court of appeals considered these property interests sufficient to resolve the dispute in this probate proceeding; any comments regarding tribal jurisdiction are dictum. Accordingly, the court's passing reference to the issue of shared

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[5] In *Kerr-McGee Corp. v. The Navajo Tribe of Indians*, No. 84-68, this Court has granted certiorari (Oct. 9, 1984), to consider whether Secretarial approval is required to validate a non-IRA tribe's tax code. There is no reason to hold this case for No. 84-68. The court of appeals did not suggest that any action or law of the Quinault Nation was unenforceable. See page 7 note 3, *supra*.

jurisdiction does not preordain the jurisdictional confusion that the petitioners predict. Indeed, the court stated (Pet. App. A28 n.8) that it spoke of Quileute "jurisdiction" only "for IRA § 4 purposes." Given that Section 4 of the IRA was amended in 1980 to lessen the premium placed on tribal membership in probate disputes (see Pet. App. F9-F10 and page 2 note 1, *supra*), the impact of the court of appeals' decision, even on future probate disputes arising on the Quinault Reservation, is limited indeed. Plainly, this case provides no occasion for this Court to sort out questions regarding the political authority of tribes other than the Quinault over the Quinault Reservation.[6]

Respectfully submitted.

Rex E. Lee
Solicitor General

F. Henry Habicht II
Assistant Attorney General

Anne S. Almy
Donald T. Hornstein
Attorneys

March 1985

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[6] Petitioners seek to bolster their dire predictions regarding the impact of the court of appeals' opinion by quoting (Pet. 36) language from the United States' court of appeals brief warning of a "jurisdictional nightmare" on the Quinault Reservation. This warning was prompted largely by the request of the Chinook Indian Tribe, amicus curiae, that the court of appeals declare "that the only body which lawfully can exercise reservation-wide jurisdiction over the Quinault Indian Reservation is one in which the members of the eight tribes for which the reservation was created have an equal voice in its formation and operation" (Chinook Amicus Br. 18). Not only did the court of appeals *not* accede to this request, it specifically noted (Pet. App. A-28 n.8) that it did not even "consider * * * whether tribes other than the Quinault and Quileute also have jurisdiction over the Quinault Reservation for IRA § 4 purposes * * *."

United States Department of the Interior
OFFICE OF THE SOLICITOR
Pacific Northwest Region
500 N.E. Multnomah Street, Suite 607
Portland, Oregon 97232

4/24/85

APR 22 1985

BIA.PN.0657

MEMORANDUM

TO: Stanley Speaks
Portland Area Director (P100)
Bureau of Indian Affairs
Attention: Branch of Titles and Records

FROM: Arthur V. Biggs, Assistant Regional Solicitor
Pacific Northwest Region (Portland)

Arthur V Biggs

SUBJECT: Effect of Decision in Williams v. Clark on Implementation of Indian Land Consolication Act

You have asked us to review an October 24, 1984 memorandum from the Administrative Law Judge, Office of Hearings and Appeals, Portland, regarding the effect of the decision in Williams v. Clark, 742 F.2d 549 (9th Cir. 1984), on the application of the Indian Land Consolidation Act, 25 U.S.C. 2201 et seq., as amended, to lands on the Quinault Indian Reservation. A Petition for a Writ of Certiorari in that case, filed by the decedent's heirs at law, was denied by the United States Supreme Court on April 15, 1985.

Based on his interpretation of the Williams decision, the Administrative Law Judge has requested that there be a change in the probate inventory appraisement listings covering allotments on the Quinault Indian Reservation, where such allotments may be affected by the provisions of the Indian Land Consolidation Act. The Superintendent, Olympic Peninsula Agency, has raised several questions regarding the precise information the Administrative Law Judge is asking for. We cannot comment on the nature and extent of the information requested by the Administrative Law Judge, because we do not understand the purpose the information is intended to serve in applying the provisions of the Indian Land Consolidation Act to the probate of allotments on the Quinault Reservation. Therefore, you should seek clarification from the Administrative Law regarding the information he seeks.

We are concerned, however, that the Administrative Law Judge may be interpreting the Williams decision more broadly than is warranted by the law and facts at issue in that case. The apparent thrust of his interpretation is that land interests on the Quinault Reservation which may escheat to the tribe under the Indian Land Consolidation Act should escheat to the Quileute Tribe if the land was owned by a Quileute tribal member. Such an interpretation strains the actual holding in the Williams case and

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is contrary to the intent and purpose of the Indian Land Consolidation Act. The *Williams* case involved the disapproval by the Interior Board of Indian Appeals of the residuary clause in the will of Joseph Willessi, a Quileute Indian, by which Willessi sought to devise his interest in an allotment on the Quinault Reservation to another Quileute Indian, Leo Williams. The IBIA held that the devise could not be approved under the restrictions of 25 U.S.C. § 464 because Williams was neither an heir of the testator nor a member of the Quinault Indian Nation. Although the district court sustained the IBIA's interpretation, the Ninth Circuit Court of Appeals reversed and held that the Quileute Tribe had sufficient interest in the Quinault Reservation to make the devise of an allotment on the Quinault Reservation by one Quileute to another proper within the meaning of Section 464. Section 464 was amended in 1980, 94 Stat. 1207, to authorize the devise of trust property not only to a decedent's heirs, but also to any lineal decendent or any other person for whom the Secretary of the Interior determines that the United States may hold land in trust. Thus, persons in the position of Mr. Williams are now proper devisees under the express terms of the statute. At the request of the Department of the Interior, the Department of Justice submitted a brief for the Secretary of the Interior in opposition to the Petition for a Writ of Certiorari in the *Williams* case. While it is the position of the United States, as *expressed* in the brief to the Supreme Court, that the *Williams* case was wrongly decided, the United States also concluded that further review was not warranted because of the exceedingly narrow scope of the decision and its limited application to probates begun prior to the 1980 amendment of the statute. The petition was denied by the Supreme Court on April 15, 1985. For your information, a copy of the United States' brief is attached hereto.

We certainly do not believe that the holding in the *Williams* case reaches beyond the facts and law at issue and do not *believe* that it has any application with respect to decisions which must be made under the Indian Land Consolidation Act. In his memorandum the Administrative Law Judge states that in *Williams* the court "specifically held the Quinault Indian Tribe *does not* have sole jurisdiction over the Quinault Indian Reservation." That is simply not the case. Although the court's opinion does contain unnecessarily confusing *dicta* concerning possible shared Quileute jurisdiction over the Quinault Reservation, the court made no specific holding regarding jurisdiction and was generally careful to limit its holding to the question of the permissible devise of Quileute property interests for the narrow purpose of the former Section 464. The decision did not disturb the federal government's (and this Department's) longstanding recognition of the Quinault Indian Nation's exclusive political and territorial jurisdiction on the Quinault Reservation. The court referred to its prior decisions upholding the jurisdictional authority of the Quinault Indian Nation to promulgate and enforce comprehensive laws regarding health, safety and zoning on the reservation. 742

F.2d at 554. In fact, the court specifically noted that its decision stemmed from a consideration of property interests of a Quileute tribal member which would remain unaffected irrespective of the Quinault Indian Nation's exclusive governmental authority over the reservation. *See* 742 F.2d at 554.

The decision in *Williams* can only be understood in the narrow context of an individual Quileute's right to devise an allotment to another Quileute under former Section 464. During the early part of the century, as the General Allotment Act was implemented on the Quinault Reservation, it was established that *individual members* of the Quileute and other Indian groups affiliated with the Quinault were entitled to allotments on the Quinault Reservation. See *United States v. Payne*, 264 U.S. 446 (1923); *Halbert v. United States*, 283 U.S. 747 (1931). Recently, in *Wahkiakum Band of Chinook Indians v. Bateman*, 655 F.2d 176, 180 (9th Cir. 1981), it was again emphasized that it was individual members of the affiliated groups, and not the Indian groups as tribes, that had been granted an interest in the Quinault Reservation through allotment. 25 U.S.C. § 464, enacted in 1934, restricted devises of trust land "to the members of the Indian tribe in which the lands ... are located." In the *Williams* case the United States argued that the Quinault Indian Nation is the tribe in which the land was located for those purposes. However, the court noted that the definition of "tribe" in the IRA included the individual "Indians residing on one reservation," see 742 F.2d at 553, and thus by implication those individual Indians with an interest in an allotment on a reservation, and therefore held that a Quileute allottee could devise property to another Quileute. *See also II Opinions of the Solicitor* 1709 (U.S. D.O.I. 1979).

Moreover, even though the court limited its holding to the effect of former Section 464 on the rights of individual allottees to dispose of trust property, its basis for that holding is undermined by erroneous assumptions about the nature and scope of the Quileute interest in the Quinault Reservation. The court noted that under the Treaty of Olympia the Quinault and Quileute Tribes ceded their lands to the United States in exchange for reservations of land "sufficient for their wants," to which the tribes were obligated to move within one year of ratification of the treaty. The court also noted that the Quinault Reservation was established in 1873 for the use of the Quinaults, Quileutes and other tribes, and that a separate reservation was established for the Quileute Tribe in 1889. Importantly, this analysis omits the salient fact that the Quileutes refused to move to the Quinault Reservation and argued that "their interpretation of the treaty was that they were to be given reservation where they always lived at the mouth of the Quillehute River." See *United States v. Moore*, 62 F. Supp. 660, 668 (W.D. Wash. 1945), *aff'd.*, 157 F.2d 760 (9th Cir.), *cert. denied*, 330 U.S. 287 (1946). The Quileute Tribe received its own present reservation as a result of its refusal to accept the Quinault Reservation. Thus, the court's conclusion that the Quileute rights in the Quinault Reservation were never extinguished glosses the more fundamental issue of how the Quileute Tribe could have acquired rights (and the nature and extent of these rights) on the reservation in the first place.

Finally, it is our opinion the *Williams* case has no application whatsoever to decisions which must be made under the Indian Land Consolidation Act. That act is intended to preserve lands in Indian ownership and to provide a mechanism for consolidating the individual fractional landholdings on reservations in order that more productive use can be made of the land. 25 U.S.C. §§ 2205 (2) and 2206, *as amended*, provide that in certain cases miniscule interests in land will escheat to the tribe where "the land is within a tribe's reservation or otherwise subject to a tribe's jurisdiction." (It should be noted that recently in *Irving v. Clark*, No. 84-1094 (8th Circuit), the court declared this provision unconstitutional. It is our understanding no decision has been made whether to request rehearing or seek review by the U.S. Supreme Court. Of course, if the decision stands the question of which tribe land would escheat to becomes moot.) For purposes of the Act "tribal jurisdiction" is intended to mean the tribe which "exercises civil governmental powers over the lands involved or that the Secretary of the Interior recognizes that the tribe has the authority to exercise civil governmental powers over such lands." H.R. Rep. 97-908, 97th Cong. 2d Sess., 8 (1982) (See 1982 U.S. Code Cong. and Adm. News 4415). The phrase "otherwise subject to a tribe's jurisdiction" was intended to insure that tribes whose reservations have been "diminished or disestablished" will be covered by the Act so long as tract lands remain within the diminished area. *Id*. Thus it is clear that miniscule land interests are intended to escheat to and be held in the name of the recognized tribe which resides on and exercises governmental authority over the reservation where the land is located. As noted above, nothing in the *Williams* decision disturbs the Department's longstanding view that the Quinault Indian Nation is the only recognized Indian governing body with jurisdiction on the Quinault Reservation.

Congress certainly has the authority to limit the power to devise and the right to inherit trust property. One of the primary purposes of the land consolidation process set in motion by the Act is to provide tribes with greater control over the use and disposition of trust land on their reservations. Achieving this goal requires resolution of several related problems. In the House Report it is noted that "many Indian tribes do not own all their lands in a single tract but have their tribal lands spread out in many tracts over a large geographical area where tracts of land are owned by the ~~tribe,~~ by individual Indians who hold their lands in trust or restricted fee and by non-Indians holding their lands in fee. This 'checkerboard' pattern of land ownership makes it very hard for tribes to develop and adopt comprehensive land use plans." *Id*., at 10. The Report also recognizes that the fractional ownership of trust property, with the number of interests multiplying from generation to generation, renders it practically impossible to make productive use of trust property. Id. Congress recognized this was a widespread problem affecting reservations across the country. The provisions in the Act for acquisition and exchange of lands and escheat of miniscule interests in lands is intended to consolidate landholdings in tribes so that they can use the land for tribal programs designed to improve reservation economies for the tribes and tribal members through development of the land. See, e.g., Id. at 5. For lands on the Quinault Reservation to escheat to tribes other than the Quinault Indian Nation would thus be contrary to the intent and purpose of the Indian Land Consolidation Act.

Please keep us advised of the status of any estate probates where this question regarding the escheat of miniscule interests to the tribe may be a factor.

Attachments:
U.S. Brief in Williams case

cc:
Tim Vollmann, Associate Solicitor
  Attention: Scott Keep

OFFICE OF THE
ATTORNEY GENERAL

Inter-office Correspondence **Date:** February 27, 1985

To: D. Berentson/D. Griffith

From: R. A. Wright

Subject: Quinault Tribal Highway Bill

You have asked for assistance in determining whether or not the Quinault Indian Nation has the authority to assume control over the proposed Quinault Tribal Highway.

The focus of your inquiry was a statement with attachments submitted to the legislative committee by Ms. Helen Sanders Kirschling, Vice President of the Quinault Allottees Association.

I have reviewed the papers submitted by Ms. Kirschling; a copy of the 1855 treaty with the Quinault and Quil-leh-ute Indians; state statutes contained in ch. 37.12 RCW; federal statutes, particularly 25 U.S.C. § 311, et seq.; the federal regulations promulgated thereunder (25 C.F.R §§ 169-170); numerous state and federal court decisions, several law review articles; two Attorney General Opinions; Felix Cohen's Handbook of Federal Indian Law (1982 Ed.); and a notebook from an October 29, 1983 Indian Law Symposium presented as a continuing legal education seminar by the University of Washington. In addition, I have contacted the Bureau of Indian Affairs offices in Portland, Oregon, and Hoquiam, Washington.

Nevertheless, the investigation that I have undertaken to date is totally void of one very important information source - the Quinault Indian Tribe.

Because of my lack of contact with the Quinault Tribe, possibly the best source of the information that you seek, I must reserve the right to do additional research and modify my conclusions where necessary.

Within these stated limitations, my research presently leads me to the conclusion that the Quinault Indian Nation, acting through the Quinault Business Committee may accept control of the proposed Quinault Tribal Highway to the extent consistent with federal and state law.

1. Most of the federal regulations relating to "Indian Reservation Roads and Bridges" are located in 25 C.F.R. § 170.

Inter-office Correspondence

D. Berentson/D. Griffith
Page 2
February 27, 1985

See, *e.q.*, 25 C.F.R. § 170.4(a) Selection of road construction projects; 25 C.F.R. § 170.5 Right of Way; 25 C.F.R. § 170.7 Cooperation with States; 25 C.F.R. § 170.8 Use of Roads. *See also* 170.16 regarding public hearings on Bureau of Indian Affairs Road Projects.

These regulations specifically contemplate the transfer of a road to a tribe. *See* 25 C.F.R. § 170.5(b). The regulations also call for reservation road priorities to be established by the tribal chairman or his designated roads committee. 25 C.F.R. § 170.16(c).

2. The case of *Makah Indian Tribe v. State*, 76 Wn.2d 485, 457 P.2d 590 (1969) held that a former federal government built road that was located on trust lands within the Makah Reservation was a "public road" for the purpose of giving the state jurisdictional control under RCW 37.12.010(8).

In *Eastern Bank of Cherokee Indians v. Griffin*, 502 F. Supp. 924 (W.D.N.C. 1980) the district court held that so long as the provision of 25 U.S.C. § 311 and the regulations promulgated thereunder (25 C.F.R. § 169) had been followed, the consent of individual Indians was not required to perfect the right of way easement conveyed by the Secretary of the Interior and approved by the tribal counsel.

3. Congress' overriding goal in Indian affairs is to encourage "tribal self-sufficiency and economic development." (*New Mexico v. Mescalero Apache Tribe*, 51 U.S.L.W. 4741, 4744 (1983))

4. My interview with the Superintendent of the Bureau of Indian Affairs in Hoquiam, Mr. Ray Maldonado, revealed that Mr. Joe De La Cruz was the representative of the Quinault Indian Nation that the state should deal with on the Quinault Tribal Highway issue. Mr. Maldonado's phone number is (206) 538-1500.

5. The case submitted by Ms. Kirschling, when read in its entirety, is not relevant to the instant highway issue. I am attaching a copy of the full text of the opinion in *Williams v. Clark*, 742 F.2d 549 (1984) to this IOC for your edification. As you can see, the primary substantive issue resolved by that decision was the fact that a member of the Quileute tribe can inherit property within the boundaries of the Quinault Reservation.

This is an inheritance case, not a road jurisdiction case. It is not relevant to the issue at hand in view of the BPA acknowledgment that Mr. De La Cruz is the appropriate representative of the Quinault Indian nation for purposes of establishing the proposed Quinault Tribal Highway.

RAW:mg

Enclosure

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
PORTLAND AREA OFFICE
POST OFFICE BOX 3785
PORTLAND, OREGON 97208

IN REPLY REFER TO:
File: 2252
SEP - 2 1988
cc: Legal

TO: Assistant Secretary-Indian Affairs
Attention: Congressional and Legislative Affairs,
Marge Wilkins, 4641-MIB

FROM: Portland Area Director
Attention: Branch of Forestry

SUBJECT: S.2752, a Bill to Declare that Certain Lands be Held in Trust for the Quinault Indian Nation, and for Other Purposes

On August 26, 1988, this office transmitted a recommendation that the Bureau support the above-referenced legislation. The purpose of this memorandum is to address whether the Quinault Indian Nation is the rightful beneficiary of the land being restored to the reservation. I understand some parties have suggested that the land be restored in name of the allottees on the reservation. In fact, however, the allottees are those who received individualized parcels of reservation land, and even if additional lands on the reservation were to be opened for allotment it would not be to those who previously acquired individual allotments. If, as the legislation proposes, the land is restored to the Quinault Indian Nation, then all members of the tribe, and not a few individuals, who will reap the benefits of tribal land consolidation.

The Quinault Indian Nation is recognized by the federal government as having exclusive political and territorial jurisdiction over the Quinault Reservation. See 51 F.R. 25115 (July 10, 1986) (list of federally recognized tribal entities). The Quinault Indian Nation is a consolidated political body comprised of members of various tribal ancestries and its constitution recognizes the right of any person of one quarter or more blood of the Quinault, Quileute, Hoh, Chehalis, Chinook, Cowlitz, or Queets Tribes to enroll in the Quinault Nation. The Quinault Nation has been retroceded political jurisdiction by the State of Washington under the Indian Civil Rights Act, and it has been repeatedly entrusted with governmental responsibilities by the federal government pursuant to the Self Determination Act and other federal statutes.

The courts have consistently recognized the Quinault Tribe's jurisdictional authority to promulgate and enforce comprehensive regulatory laws on the reservation. See, e.g., Snow v. Quinault Indian Nation, 709 F.2d, 1319 (9th Cir. 1983), cert. denied 104 S.Ct. 655 (1984); Cardin v DeLaCruze, 671 F.2d 363 (9th Cir. 1982), cert. denied, 102 S.Ct. 293 (1982). Judge Boldt, in the

cM

landmark fishing case, United States v. Washington, recognized the Quinault Nation as the entity "maintaining a tribal government on the Quinault Reservation" for purposes of regulating and managing the tribal fishery under the Treaty of Olympia. United States v. Washington, 384 F.Supp. 312, 372 and 374 (W.D. Wash. 1974). In Cultee v. United States, 713 F.2d 1455 (9th Cir. 1983), the court treated the Quinault Nation as the jurisdictional tribe on the Reservation for the probate purposes of the Indian Reorganization Act. Significantly, in Wahkiakum Band of Chinook Indians v. Bateman, 655 F.2d 176 (9th Cir. 1981), the court recognized that those persons provided allotments on the Reservation have individual rights only, and not the governmental or political rights accorded recognized tribes such as the Quinault Nation.

Congress has twice returned lands to the Quinault Nation. See Act of October 15, 1962, 76 Stat. 913; Act of August 26, 1959, 73 Stat. 427. Moreover, in 1947 Congress declared the Quinault Nation the proper party plaintiff to litigate the boundary survey dispute that the proposed litigation is intended to resolve. 61 Stat. 416. Commenting on the 1947 Act, the Secretary of the Interior told Congress that "collectively the Indians having an interest in that Reservation, including those of the blood of other tribes consolidated with the Quinault pursuant to the treaty, Executive Order, and act of Congress may be regarded as one tribe." See H.R. Rep. No. 671, 80th Cong., 1st Sess. 3 (1947). The Quinault Nation has assumed the responsibility for pursuing this matter with Congress. Therefore, the Quinault Nation should be the beneficiary of this legislation that will equitably resolve the claim.

Residents of the Quinault Reservation look to the Quinault Indian Nation to provide essential government services such as law enforcement, social service programs, resource management and rights protection. As we pointed out earlier, this proposed legislation will greatly enhance the Quinault Nation's land consolidation efforts and be a major step in helping the Tribe obtain its goal of self determination and economic self sufficiency. The benefit of these efforts will accrue to all residents of the Reservation, including the allottees, and there should be no question but that the Quinault Indian Nation is the appropriate beneficiary of this proposed legislation.

cc: Quinault Tribe

MAYR BROS. LOGGING CO., INC.
P.O. BOX 180
HOQUIAM, WA. 98550-0180
(206) 532-7490

July 27, 1988

The Hon. Daniel J. Evans
U. S. Senate
702 Hart SOB
Washington, D.C. 20510

Senator Evans:

Thank you for giving me the chance to comment on your proposed legislation to change the boundary of the Quinault Indian Reservation.

As a general policy Mayr Bros. is opposed to any removal of timberland from the multiple use management of the USFS. Such vast acreages have already been removed from future timber management that the timber industry is now fighting for its very survival.

However this proposed legislation is differant in that it deals with a laudable attempt by the Quinault tribe to become more self sufficient. Mayr Bros. does not oppose the draft bill which you provided for our review.

Mayr Bros. would however oppose any legislation that did not guarantee continued domestic processing of the included timber and also mantain the integrity of the Grays Harbor Sustained Yield Unit. This proposed bill seems to meet our concerns in both of these matters.

Mayr Bros. has maintained a long business relationship with the Quinaults and we are sure we can maintain this relationship into the future.

Thank you for asking Mayr Bros. for our comments in this matter.

Sincerely,

Thomas M. Mayr

Thomas M. Mayr
President
Mayr Bros. Logging Co. Inc.

CC.

NIFM
NORTHWEST INDEPENDENT FOREST MANUFACTURERS
P.O. Box 11346 – Tacoma, Washington 98411 Suite 400 – 7011 So. 19th Street (206) 564-0452

July 25, 1988

The Honorable Daniel J. Evans
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510-6450

Dear Senator Evans:

In response to your letter of July 15th regarding the Quinault Indian Nation land claim, Northwest Independent Forest Manufacturers' Board of Directors met July 22nd and discussed this issue.

Our position is we do not oppose the legislation as drafted. This position is based on the condition that two provisions within Section 4 of the draft legislation not be substantially altered in the legislative process:

1. That conditions regarding the processing of timber sold from lands granted to the Quinault Indian Nation from the Olympic National Forest remain as if they were under U.S.D.A. Forest Service ownership.
2. That timber processing requirements of the Grays Harbor Sustained Yield Unit as administered by the Forest Service remain as if they were under U.S.D.A. Forest Service ownership.

Thank you for the opportunity to comment on this issue.

Sincerely,

M. J. Kuhne

M. J. "Gus" Kuehne
President

MJK/cs
cc: Congressman Al Swift
NIFM Board of Directors

OFFICE OF
COUNTY COMMISSIONERS

MIKE MURPHY
FIRST DISTRICT

WILLIAM F. VOGLER
SECOND DISTRICT

BOB PAYLOR
THIRD DISTRICT

P.O. BOX 380
MONTESANO, WASHINGTON 98563
PHONE (206) 249-3731

GRAYS HARBOR COUNTY
STATE OF WASHINGTON

July 29, 1988

The Honorable Daniel J. Evans
United States Senate
Select Committee on Indian Affairs
Washington, DC 20510-6450

Dear Senator Evans:

Thank you for the opportunity to comment on the draft legislation concerning the Quinault Indian Reservation north boundary.

Grays Harbor County will not oppose the legislation as long as the following language remains in the bill:

1. Section 3 - County Receipts from National Forest Timber Sales.
2. Section 4 - Limitations on Timber Harvest (A & B).
3. Section 7 - Use of Timber Sale Proceeds (A, B, C & D).

Please keep us informed on the status of the legislation and if any changes are made.

Sincerely,

William F. Vogler

WILLIAM F. VOGLER, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS
FOR GRAYS HARBOR COUNTY

WFV/rwp/bj

Port of
Grays Harbor

PM 5:48

July 28, 1988

Honorable Daniel J. Evans
United State Senate
324 Hart Senate Building
Washington, D.C. 20510

Dear Senator Evans:

The Port of Grays Harbor Commission has been contacted by the Quinault Indian Nation concerning restoration of certain parcels of its land base due to a late 1800's surveying error. Review of all the documentation and the draft legislation dated July 15, 1988 has been reviewed by Port staff and the Commission.

Additionally, a special meeting was held on July 28, 1988, to hear Mr. Guy McMinds' presentation on the issue and proposal. The Port Commission elected at the conclusion to support this legislation in principle.

The Port of Grays Harbor has long viewed the Quinault Indian Nation as an important partner in the economic development of the region. Their efforts to achieve further self sufficiency can be enhanced by the proposed land transfer. Thank you for your initiative in this matter.

Sincerely,

PORT OF GRAYS HARBOR

John Stevens

John Stevens, President
Port of Grays Harbor Commission

JHS:gc

cc: Senator Brock Adams
Congressman Al Swift

P.O. Box 660 • Aberdeen, WA 98520-0141 • (206) 533-9528 • SCAN 579-9528 • FAX (206) 533-9505

The Seattle Times

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THURSDAY
August 11, 1988

5,000-acre 'payback' owed to Quinaults

THANKS to persistent and politically skillful efforts, it appears that a surveying error that nearly a century ago deprived the Quinault Indian nation of a tract of Olympic Peninsula forest land might be remedied.

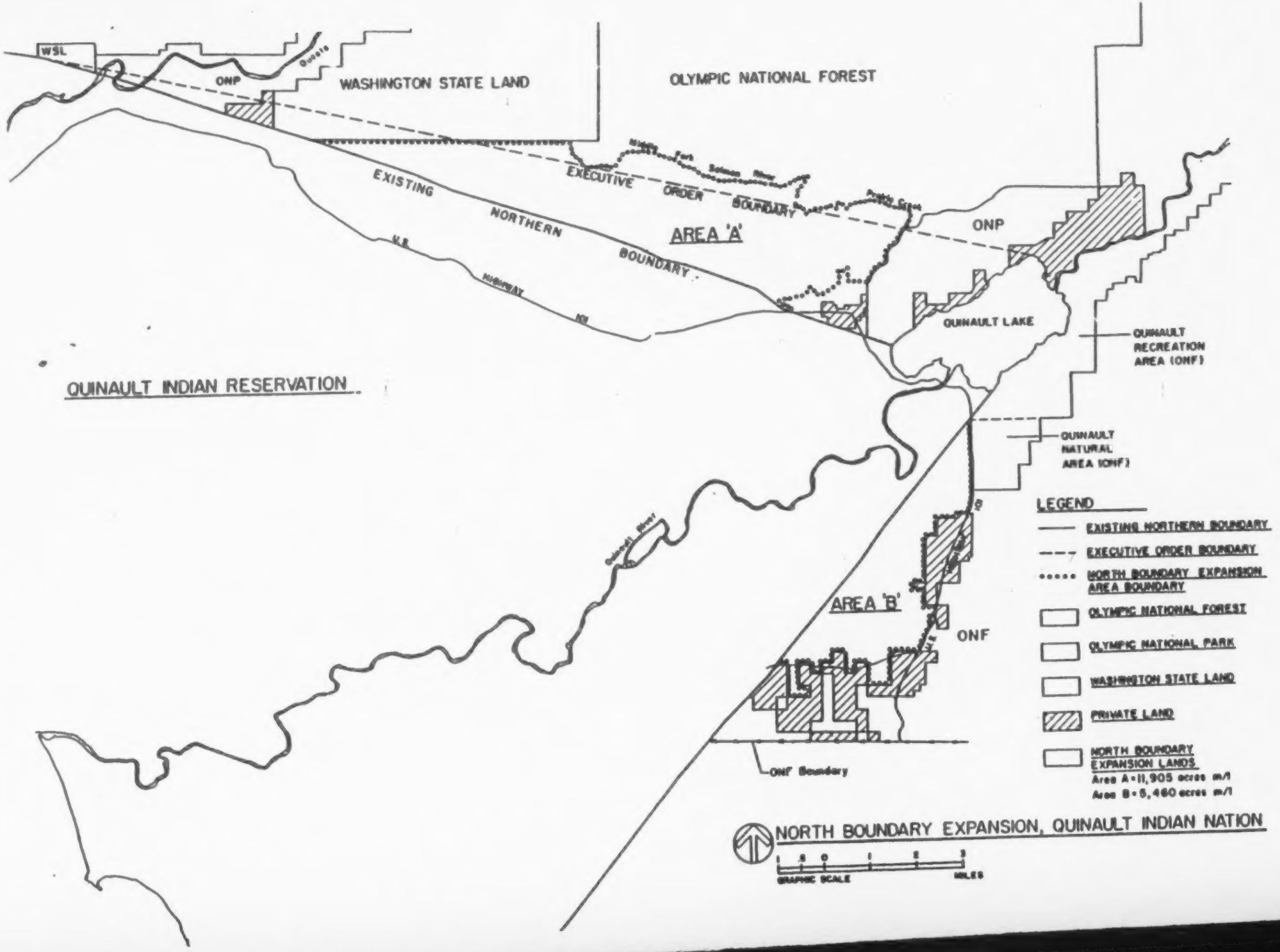
Republican Sen. Dan Evans and Democratic Rep. Al Swift, working with tribal officials and communities of the peninsula and Southwest Washington, have drafted a bill that would restore 15,000 acres of land that's long been owed the Quinaults. It deserves to be approved.

In 1892, while laying out the boundaries of the Quinault Reservation, federal surveyors made a mistake. Instead of producing a reservation boundary line westward from the northernmost tip of Lake Quinault, the surveyors laid out a line westward from a more southerly point along the lake shore. Result: A wedge-shaped chunk of land was left outside the intended reservation.

Later, there were some too-familiar scenes in dealings between Indians and "the white man's government." When tribe members asked to have the land included, government officials ignored them. Even when the Quinaults got a favorable ruling from the Indian Claims Court in 1945, nothing was done.

About 10,000 acres in "the wedge" are now under the U.S. Forest Service and would become the nucleus of the "giveback." Some 5,000 acres of the land in the wedge is now in special use, much of it in Olympic National Park, some in private ownership. Those would be unaffected. Another 5,000 acres of Forest Service land would be added to the tribal trust to make up the new 15,000-acre total.

There'll probably be public hearings on the legislation beginning next month. There should be ample local support. It can be another in a series of congressional actions that correct errors of the past – errors that harmed Indian tribes or other groups, such as the displaced Japanese-Americans of World War II – and provide proof that the wheels of the Great Democracy, although often painfully slow, do produce decent results.



NORTH BOUNDARY EXPANSION, QUINAULT INDIAN NATION

WSL
ONP
Queets
WASHINGTON STATE LAND
OLYMPIC NATIONAL FOREST
Middle Fork Salmon River
Prairie Creek
EXECUTIVE ORDER BOUNDARY
EXISTING NORTHERN BOUNDARY
AREA 'A'
U.S. HIGHWAY 101
ONP
QUINAULT LAKE
QUINAULT RECREATION AREA (ONF)
QUINAULT NATURAL AREA (ONF)
QUINAULT INDIAN RESERVATION
Quinault River
AREA 'B'
ONF
ONF Boundary
LEGEND
EXISTING NORTHERN BOUNDARY
EXECUTIVE ORDER BOUNDARY
NORTH BOUNDARY EXPANSION AREA BOUNDARY
OLYMPIC NATIONAL FOREST
OLYMPIC NATIONAL PARK
WASHINGTON STATE LAND
PRIVATE LAND
NORTH BOUNDARY EXPANSION LANDS
Area A = 11,905 acres m/l
Area B = 5,460 acres m/l
1 .5 0 1 2 3
GRAPHIC SCALE
MILES

AREA "A", Northern Area:

Beginning at the westerly point of the expansion area, at that point where the southern line of Township 24 North intersects the existing Quinault Indian Reservation boundary, thence heading easterly along the said southern line until it intersects the Salmon River, thence southeasterly along the north bank of Salmon River to the junction with the Middle Fork of the Salmon River, thence easterly along the north bank of the Middle Fork of the Salmon River to the junction with an un-named tributary, such junction occurring in the NE,SW,SW,SW, Section 33, Township 24 North, Range 10 West, thence northeasterly along the north bank of the un-named tributary to its intersection with USFS road No. 2140 (old road No. 2432), thence in a southerly then easterly direction along the northeast side of road No. 2140 to the junction with USFS road No. 2190 (old road No. 2460), thence northerly along the northwest side of road No. 2190 approximately one quarter mile to the intersection with an un-named drainage to Prairie Creek, such intersection occurring in the SE,SE,NE,NW, Section 3, Township 23 North, Range 10 West, thence with the flow of the drainage along the northeast bank to the junction with Prairie Creek, thence in a general easterly direction along the bank of Prairie Creek to its source where it meets the newly established boundary of the Olympic National Park, thence southwesterly along the ONP boundary to the northeast corner of Section 15, Township 23 North, Range 10 West, thence westerly along the north line of Section 15 to the midline of the ridge separating the Prairie Creek drainage from the Milbourn Creek drainage, thence northerly along the midline of said ridge to the intersection of USFS road No. 2190 (old road No. 2460), known as the Prairie Creek Road, thence southwesterly along the southern edge of road No. 2190 to the intersection with the existing Quinault Indian Reservation boundary, thence northwesterly along the boundary to the point of beginning. The intent of this description is to include in the transfer to the Quinault Indian Nation the entire rights and ownership of the USFS in the beginning of the Prairie Creek Road No. 2190. This description may be modified to accomplish this intent. For the purposes of this description the "bank" of the waterways has been interpreted to include the area up to the mean high water mark.

AREA "B", Eastern Area

Beginning at the most northern point of the expansion area, at that point where US Highway 101 intersects the eastern boundary of the Quinault Indian Reservation, thence south along the western edge of the right-of-way of US Highway 101 to where it meets the private ownerships around the community of Neilton, thence in westerly, southerly and easterly directions around said private ownerships such as to exclude them from the expansion area, thence continuing south along the right-of-way to the intersection with the northern line of Section 25, Township 22 North, Range 10 West, thence westerly along the section line to the Northwest corner of said section, thence in a westerly direction meandering along the northern boundary of the private holdings of ITT Rayonier, such as to exclude them from the expansion area, until the intersection with the existing Quinault Indian Reservation boundary, thence northeasterly along the boundary to the point of beginning.

Quinault Indian Nation

POST OFFICE BOX 189 ☐ TAHOLAH, WASHINGTON 98587 ☐ TELEPHONE (206) 276-8211

1988 SEP 12 AM 9:04

September 9, 1988

The Honorable Daniel Inouye
United States Senate
722 Hart Senate Office Building
Washington, DC 20510

Dear Senator Inouye:

The Quinault Indian Nation wishes to thank you for the prompt hearing scheduled for S. 2752 and request your support for this legislation of critical importance to the Quinault Nation. As you are aware, this bill, recently introduced by Senator Evans, is intended to rectify the erroneous exclusion of approximately 16,000 acres from the Quinault Reservation and will provide the Quinault Nation with the resources to develop and implement an effective land consolidation program on the Quinault Reservation. A companion bill, H.R. 5203, has been introduced in the House by Representative Al Swift.

An information sheet on the bills is enclosed. As set forth therein, the surveyor contracted by the United States in the 1890's to survey the Quinault Reservation, was improperly directed to exclude land along the Reservation's north boundary to avoid inconveniencing a handful of non-Indian settlers who had taken up claims after the Reservation's establishment. Most of the excluded land has been retained by the United States and are presently administered by the National Forest and National Park Services as parts of the Olympic National Forest and Olympic National Park.

The legislation introduced by Senator Evans and Representative Swift restores to tribal ownership the land improperly excluded from the Reservation which is presently administered by the Forest Service. Additional Forest Service land east of the Reservation is also transferred to the Quinault Nation and made a part of the Quinault Reservation in lieu of restoration of excluded land now administered by the Park Service, an area of the Olympic National Forest adjacent to the Park and land now held by the state or private landowners. Proceeds from the sale of timber from the lands transferred to the Quinault Nation may only be used for land acquisition, management, reforestation, and the mitigation of adverse environmental impacts caused by timber harvest activities.

In this way the legislation is intended to rectify the historic injustice done to the Quinault Nation while accommodating the public interest in protection of the Olympic National Park land base and the interest of the state and private individuals who hold land improperly excluded from the Reservation. For the Quinault Nation, the legislation also promises to provide the resources necessary for the Nation to effectively deal with the multitude of well recognized problems caused by the allotment of the Reservation's forest lands, and the subsequent fractionation of ownership and checkerboarding which resulted.

In conclusion, your support for this legislation would be greatly appreciated. If you have any questions regarding S. 2752, I would be happy to discuss them with you at your convenience or to address them during the hearing.

Very truly yours,

Joseph B. DeLaCruz

Joseph B. DeLaCruz
President

JBD/sbt

Written Response of the Quinault Indian Nation to the Testimony of Dennis J. Whittlesey, to the Senate Select Committee on Indian Affairs, September 12, 1988

Historical Background of the Quinault Reservation and Its Allotment

In early 1855, the United States attempted to negotiate a treaty with the Quinault, Queets, Chehalis, Chinook, and Cowlitz looking toward the cession by these groups of their territory and their consolidation on a single reservation. Upper Chehalis Tribe v. United States, 8 Ind. Cl. Com. 436, 442-44 (1960). The treaty negotiations failed, in large part, because of Chehalis, Chinook, and Cowlitz objections to being placed together on a single reservation with the Quinaults in the latter tribe's territory. Id. See also, Swan, The Northwest Coast (1857) (University of Washington Press reprint) at 337 - 351; Minutes of the Council with the Upper and Lower Chehalis, Lower Chinook, Cowlitz, and Quinaiutl (sic) Indians held February 20 to March 2, 1855.

After the initial failed treaty council, Governor Stevens instructed Col. M. T. Simmons to explore the north Washington coast between Grays Harbor and Cape Flattery and to attempt to negotiate a treaty with the tribes inhabiting this area. In the course of his assignment, Col. Simmons met with the Quinault, Queets, Quileute, and Hoh and concluded a treaty which Governor Stevens later signed. Quinaielt Tribe v. United States, 7 Ind. Cl. Com. 1, 6 (1958); Quileute Tribe v. United States, 7 Ind. Cl. Com. 31, 37-8 (1958). The Treaty with the Quinault was ratified by Congress in 1859, 12 Stat. 971.

Under the treaty, the Quinault, Queets, Quileute, and Hoh Tribes ceded their territory to the United States, and the United States agreed to reserve for the use and occupancy of the signatory tribes a tract or tracts sufficient for the tribes' wants to which the tribes were required to remove within one year of treaty ratification. Article 6 of the treaty also provided the United States with authority to "consolidate" the signatories and "other friendly tribes;" to assign reservation lands to individuals and families willing to locate on such lands as a permanent home; and to remove "said Indians" from "said reservation or reservations to such other suitable place within the Territory as he may deem fit...." 12 Stat. 971.

The United States never concluded a treaty with the Chinook, Chehalis, or Cowlitz. Instead, the United States took the aboriginal lands of each of these peoples and treated them as public lands. Chinook Tribe v. United States, 6 Ind. Cl. Com. 177 (1958); Upper Chehalis Tribe v. United States, supra; Simon Plamondon, on relation of the Cowlitz Tribe v. United States, 21 Ind. Cl. Com. 143 (1969).

Nonetheless, the United States did later set aside two different nontreaty reservations for these Indian groups who had refused to join in a treaty requiring them to relocate to a reservation with the Quinault. The Chehalis Reservation was set aside by the Secretary of Interior in 1864 for the Chehalis, Chinook, Cowlitz and other Indians, Upper Chehalis Tribe v. United States, supra at 445-47 and the Shoalwater Bay Reservation was established by Executive Order in 1866 for "[r]emnants of the Chinook Bands and Lower Chehalis." Id. at 447.

In 1861, a provisional reservation of approximately 10,000 acres was set aside pursuant to the treaty at the mouth of the Quinault River. In 1872, however, only the Quinault were located on the provisional reservation. Quileute Tribe v. United States, 7 Ind. Cl. Com. 31, 33-4 (1958). By executive order in 1873 the provisional reservation and additional lands totaling approximately 200,000 acres were reserved for the use of the "Quinaielt, Quillehute, Hoh, Quit, and other tribes of fisheating Indians of the Pacific Coast...." The enlarged reservation was located in the aboriginal territory of the Quinault and Queets, and included the two tribes' principal villages located at the mouths of the Quinault and Queets Rivers. The remainder of the reservation was covered by a dense virgin forest. Quinaielt Tribe v. United States, supra at 7, 20-21.

In enlarging the Quinault Reservation the United States hoped to collect the Quileute and Hoh, who were treaty signatories, and individual Chinook, Chehalis, and Cowlitz, who had not concluded a treaty with the United States, on the Quinault Reservation. See e.g. Halbert v. United States, 283 U.S. 753, 757 (1931). This goal, however, proved impossible.

As previously noted, the United States in 1864 had established the Chehalis Reservation. The purpose of that reservation was to settle the claims of and provide a home for remnants of the Chehalis, Cowlitz, and Chinook who refused to relocate elsewhere. Upper Chehalis Tribe v. United States, supra at 445-47; Two years later the Shoalwater Bay Reservation was set aside for Indians who resided in the vicinity of the Bay and desired their own reservation at that location. The Quileutes, like the Chehalis, Chinook and Cowlitz before them, also regarded the Quinault Reservation as the territory of the Quinaults, and their understanding of the Treaty was that they would have their own separate Reservation on the Quileute River and would not be required to relocate to the Quinault Reservation. As a result, the United States' hope that the Quileutes would be induced to remove to the Quinault Reservation was quickly abandoned and the United States took no action to relocate other tribes to the Quinault Reservation.

In 1889 the United States acquiesced in the Quileute Tribe's desire to have its own separate rservation in the Quileute's ancestral homeland. United States v. Moore, 62 F.Supp. 660, 668-69 (W.D. Wash. 1945), aff'd, 157 F.2d 760, 764 (9th Cir. 1946). Similarly, the Hoh Tribe declined to relocate to the Quinault Reservation. And, in 1893 the United States set aside a reservation for the Hoh Indians who refused to relocate to the Quinault Reservation. Executive Order of September 11, 1893 establishing the Hoh Reservation for "Hoh Indians not now residing on any Indian reservation". I Kappler, Indian Affairs, 916 (1904).

Although the Indian groups for whom the Chehalis, Shoalwater, Quileute, and Hoh Reservations were established refused to relocate to the Quinault Reservation as political entities, many individuals from these groups did relocate and were assimilated into the Quinault community. As a result, today the membership of the Quinault Indian Nation includes many individuals of Chinook, Chehalis, Cowlitz, Quileute, and Hoh ancestry, as well as Queets and Quinault.

In 1892, the boundaries of the Reservation established by the 1873 Executive Order were finally surveyed. As the information we have previously provided clearly indicates approximately 16,000 acres were improperly excluded.

In 1905, the United States began to allot the Quinault Reservation under the terms of the General Allotment Act of 1887, 4 Stat. 388, which provided for the allotment of land suitable for agriculture upon which Indians were to locate and make their homes. Both Article 6 of the Treaty with the Quinault, 12 Stat. 971, and the General Allotment Act, 24 Stat. 380, expressly required reservation residence as a prerequisite to allotment.

On many reservations "surplus" lands were opened to homesteading by nonIndians after allotments were issued to all eligible reservation Indians. See e.g. Cohen, Handbook of Federal Indian Law, p. 613 - 14 (1982 ed.) In 1911 Congress passed a special Quinault Allotment Act, 36 Stat. 1345. This Act provided that after the allotment of lands to Indians residing on the Reservation, "surplus" Quinault Reservation lands were to be allotted "to all members of the Hoh, Quileute, Ozette or other tribes of Indians of Washington who are affiliated with the Quinault and Quileute tribes" and who "elect to take allotments on the Quinault Reservation rather than on the reservations set aside for these tribes." The legislative history of the Quinault Allotment Act indicates that the purpose of the Act was to provide allotments for those individual Indians living on the smaller reservations established for the Indians who had not moved to the Quinault Reservation and whose own reservations lacked sufficient land for allotment. H. Report 2152, 61st Cong. 3d Sess (1911).

Allotment stopped in 1912, however, because of the lack of suitable agricultural land, and did not resume until the Supreme Court's decision in United States v. Payne, 264 U.S. 446 (1924). In Payne the Supreme Court held that forested land capable of being cleared for agricultural use is subject to allotment. With this decision, allotment of forested lands went forward even though little, if any, forested land on the Quinault Reservation has ever been cleared for agriculture or is suitable for such use.

In 1931 the Supreme Court again addressed allotment of the Quinault Reservation. In Halbert v. United States, 283 U.S. 753 (1931) the Court ruled that individuals of Chehalis, Chinook, and Cowlitz ancestry were entitled to allotments of surplus Quinault Reservation lands, in addition, to the Quinault, Queets, Hoh, Quileute, and Ozette. The Court also ruled that reservation residence was not required as a prerequisite qualification to obtain an allotment. Although under the General Allotment Act it was anticipated that recipients of allotments would relocate to the Quinault Reservation after receiving their allotment.

As the result of the 1911 Allotment Act, Halbert, and Payne the United States proceeded with allotment, and by 1933 the Quinault Reservation was fully allotted. In all, 2,340 allotments of approximately 80 acres each were deeded in trust to individuals of Quinault, Quileute, Queets, Hoh, Ozette, Chehalis, Chinook, and Cowlitz ancestry, reservation residents and non-residents alike.

The allotment process distributed virtually the entire Reservation timber and land resource base to the individual allottees. The only lands not allotted were small agency reserves, some unassigned village lots, the beaches, and submerged and submersible lands. Thus while the allottees received substantial benefits from allotment, the tribal communal resource base was devastated. The Quinault Indian Nation was left with little in the way of resources necessary to economically develop the Reservation or to provide essential services to the community.

Analysis of the Legal Authority Cited in the Testimony of Dennis J. Whittlesey

An analysis of the arguments made on behalf of the Chehalis Tribe and by the unrecognized Chinook and Cowlitz groups (hereafter collectively referred to as the "Chinooks") must begin with the decisions of the Supreme Court in United States v. Payne, 264 U.S. 446 (1924), and Halbert v. United States, 283 U.S. 753 (1931). These cases address the right of individual Indians to take allotments on the Quinault Indian Reservation. They do not hold that the Chinook, Chehalis, and Cowlitz have broad tribal rights on the Quinault Reservation.

1. United States v. Payne and Halbert v. United States

The Payne case arose out of the United States' refusal to grant an individual Quileute tribal member an allotment containing timbered lands. The only question addressed by the court was whether forested land is subject to allotment.

> The sole question we are called upon to decide is whether the land, being timbered, is to be excluded from the operation of the Allotment Act which speaks only of agricultural and grazing lands.

United States v. Payne, supra at 448. The court held that land capable of being cleared and cultivated is subject to allotment. Id.

The decision assumes without discussion that Payne as a member of the Quileute Tribe is otherwise entitled to an allotment on the Quinault Reservation. Nothing in the Payne decision suggests that the Quileute Tribe holds any property or other interest in the Quinault Reservation beyond the right of individual Quileutes to take an allotment on the Quinault Reservation.

In 1931 the Supreme Court decided a second case relating to allotment of the Quinault Reservation, Halbert v. United States. Again, the United States had denied allotments sought by individual Indian applicants, and again suit was brought to establish and enforce the individual allotment applicant's right to an allotment.

The three issues before the court in Halbert relate to the eligibility of individual applicants for allotment. Are individual Chehalis, Chinook, and Cowlitz entitled to allotments of land on the Quinault Reservation? Is personal residence on the Quinault Reservation necessary to obtain an allotment? And, are the children and grandchildren of an Indian woman and white man eligible for allotment?

> The plaintiffs are all of Indian blood and descent, but none is a full-blood Indian. Some are members of the Chehalis, Chinook, and Cowlitz tribes, and the question is presented whether these tribes are among those whose members are entitled to allotments from lands within the Quinaielt Reservation. Many do not personally reside on the reservation, and we are asked to decide whether this defeats their claim. Some are the issue, either children or grandchildren, of a marriage between an Indian woman and a white man, and whether this is an obstacle to allowing their claims is a further question."

Halbert, supra at 755-56. The decision addresses each of these issues in turn holding that individual Chehalis, Chinook, and Cowlitz are entitled to allotments on the Quinault Reservation, that reservation residence is not a precondition for allotment, and that the issue of marriages of Indian women and white men are not necessarily barred from taking an allotment.

Halbert does not address the rights or interest of any tribe in the Quinault Reservation. Rather, it concerns the right of individual Chinook, Chehalis, and Cowlitz to take allotments of reservation land. The 1911 Quinault Allotment Act which is the focal point of Halbert and which the Supreme Court held granted nonresidents of Chehalis, Chinook, and Cowlitz ancestry the right to an allotment grants no rights to the Chehalis, Chinook, or Cowlitz Tribes themselves.

Creation of tribal rights would have been antithetical to a principle purpose of the allotment acts which were designed to encourage assimilation and the termination of tribal existence through the dispersal of tribal communal landholdings. F. Cohen, Handbook of Federal Indian Law, 143 (1982). This termination policy continued until the publication of the Merriam Report and adoption of the Indian Reorganization Act in 1934 which for all practical purposes halted allotment.

The unpublished district court decision in Halbert, later affirmed by the Supreme Court, Halbert v. United States, 283 U.S. 753 (1931), also makes clear that Halbert cannot be claimed to recognize any Chinook tribal rights. The district court specifically found that no Chinook tribal organization existed, and all that remained of the Chinook and other Southwest Washington Indians in 1873 at the time of the Quinault Reservation Executive Order, and in 1911 when the Quinault Allotment Act was passed, were "remnants of bands and tribes." Halbert v. United States, Memorandum Decision at 26 (W.D. Wash. Nov. 21, 1928.) The district court characterized its task as that of determining the rights of the surviving members of "vanishing tribes." Id.

2. Quinaielt Tribe of Indians v. United States,

The Chinooks rely on the decisions of the Court of Claims in Quinaielt Tribe v. United States to support their claim that eight separate tribes are entitled to equal rights in the Quinault Reservation. The first Claims Court decision, however, is interlocutory in nature, and in its final decision the court expressly ruled that the interests of the various tribes in the Quinault Reservation were not at issue.

> We also said that tribes other than the Quinaielt Tribe had an interest in these lands, but that the proof did not show what part of the value of them the Quinaielt Tribe was entitled to recover. Subsequently, Congress passed the Act of July 24, 1947 (61 Stat. 416 in which it declared that the Quinaielt Tribe was the proper party plaintiff in this proceeding for the purpose of prosecuting this action to final conclusion on behalf of all Indians having rights in the reservation.
>
> The only question now before us, therefore, is the valuation of the lands. **The question of the respective interests of the various tribes and bands is not before us.**

118 Ct.Cl. at 228. (Emphasis added.)

The "equal rights" language of the decisions must be read in light of the Claims Court's reliance upon the Halbert decision for that proposition. See e.g., Quinaielt Tribe v. United States, 102 Ct.Cl. 822, 835 (1945). The "equal rights" of the "affiliated tribes" flowing from Halbert are the rights of individual members of such tribes to take an allotment on the Quinault Reservation. It is this right of individual Indians who are members of the "affiliated tribes" to take an allotment on the Quinault Reservation which the Claims Court decisions recognize as constituting the tribal interest of "affiliated tribes" in the Quinault Reservation when the Claims Court speaks of Halbert as holding that Chinook are entitled to equal rights.

When the Claims Court expressed uncertainty as to whether or not the Quinault Tribe was representing only descendants of the aboriginal Quinault Tribe or all Indians with rights in the reservation, 102 Ct.Cl. 822, 835 (1945), Congress passed remedial legislation making it clear that the Quinault Tribe represented the interests of all Indians having rights in the Quinault Reservation. 61 Stat. 416. Significantly, this legislation was passed based on the Secretary of the Interior's report to Congress that "collectively the Indians having an interest in that reservation, including those of the blood of other tribes consolidated with the Quinault pursuant to the treaty, Executive Order, and Act of Congress may be regarded as one tribe," and that it was "proper to refer to the collective group regardless of tribal blood as the Quinault Indians." H.R. Report 671, 80th

Cong., 1st Sess. (1947). This clear executive branch recognition of the consolidated Quinault Tribe as the appropriate tribal entity to represent all the Indians of the Quinault Reservation in response to the first Claims Court decision belies the Chinooks' claim.

3. Wahkiakum v. Bateman

The third case cited is Wahkiakum Band of Chinook Indians v. Bateman, 655 F.2d 176 (9th Cir. 1981). In this case the "Wahkiakum Band of Chinook Indians," a subgroup of unrecognized "Chinooks," asserted a claim to federally protected rights to fish at the usual and accustomed fishing places of the aboriginal Wahkiakum Chinook Indians on the Columbia River.

The Court of Appeals held that the Wahkiakum's aboriginal fishing rights on the Columbia River had been extinguished and that any post-treaty affiliation the Wahkiakum Band claims with the Quinault Tribe does not give the Wahkiakum standing as a treaty signatory. Id. at 179. In dicta the Wahkiakum opinion indicates that individual Wahkiakums affiliated with the Quinault may share in the rights reserved under the treaty. Id. at 179-80.

The interpretation of the Court of Appeals' decision advanced by the Chinooks was rejected by the District Court for the Western District of Washington in a later case. That case, Wahkiakum Band of Chinook Indians v. Schmitten, was filed by counsel for the Chinook on behalf of the Wahkiakum plaintiffs shortly after the Court of Appeals decision in Bateman. In Wahkiakum Band v. Schmitten the Wahkiakum group and some of its members claimed that Bateman ruled that the self-described Wahkiakum Band possesses a tribal right to fish at usual and accustomed fishing places reserved by the Quinault under the Treaty of Olympia. The District Court rejected this argument. The court stated:

> Under Article VI of the Treaty, other tribes could become consolidated or affiliated with signatory tribes after execution of the Treaty. The courts have held that after-affiliated tribes share in the treaty fishing rights of the signatory tribes. The collection of affiliated tribes is now called the "Quinault Tribal Nation." The identities of such after-affiliated tribes generally merge into that of the Quinault Tribal Nation, and they no longer exist as separate entities. Their members are entitled to participate in the government of the Quinault Tribal Nation.
>
> The Chinooks were one such "after-affiliated" tribe. Halbert v. United States, 283 U.S. 753 (1981) (sic); Wahkiakum I, at 178. A person of at least 1/4 blood Chinook blood can become an enrolled member of the Quinault Tribal Nation, and thus share in the Quinaults' fishing rights.

> What then of these plaintiffs? They identify themselves as the "Wahkiakum Band of Chinook Indians," and are descended from the Chinook Tribe (See: Affidavit of Stephen Dow Beckham). But with one exception, [Eugene Goodell, an enrolled Quinault] no plaintiff can establish he has as much as 1/4 Chinook blood. The Quinaults will therefore not enroll them as members, and will not extend treaty fishing privileges to them.

Wahkiakum Band of Chinook Indians v. Schmitten, No. C81-630T(C) Report and Recommendation on Steelhead T.R.O. at 5-6 (W.D. Wash. 12-17-81), approved by Order of January 9, 1982.

The Report and Recommendation notes that "there is a substantial question whether the Wahkiakums have maintained a continuous existence." Id. at 6. And, it concludes that the Wahkiakum Band does not hold a right to share in Quinault treaty rights which it may independently confer upon its members.

The right which "after-affiliated" tribes do hold according to Schmitten is the right of individuals of sufficient Indian blood to affiliate with the Quinault Nation through enrollment as individual members of the Nation, thereby entitling such individuals to share equally in the treaty rights reserved by the Quinaults.

> [Individual Wahkiakums of sufficient Chinook blood are entitled to secure the] rights described by the court [in Bateman] by enrolling as members of the Quinault Tribal Nation. Others, however, who have only traces of Chinook blood, are not so entitled. ...[T]his does no violence to the conclusions stated by the court in Wahkiakum I.

Id. at 8.

4. Williams v. Clark

The Chinooks reliance on Williams v. Clark, 742 F.2d 549 (9th Cir. 1984), cert. denied, 105 S.Ct. 2017 (1985), for the proposition that the Quinault Nation does not exercise exclusive jurisdiction over the Quinault Indian Reservation is also misplaced. The case holds that Quilieute tribal members had a right to an allotment on the Quinault Reservation and a right to devise property to other Quileutes under Section 4 of the IRA. With respect to the broad claims advanced before the Committee by the Chinooks the Court of Appeals stated:

> We do not consider here whether tribes other than the Quinault and Quileute also have jurisdiction over the Quinault Reservation for IRA Sec. 4 purposes under the Executive Order of November 4, 1873. Further, we do not consider the extent of the Quileute Tribe's jurisdiction

over the Quinault Reservation.

Id. **n.8 at 555. The Court of Appeals express limitation of the scope of its opinion and its avoidance of any discussion of Chinook claims is particularly significant in light of the fact that the unrecognized Chinook Tribe appeared as an amicus before the court and urged it to recognize claims to the Quinault Reservation similar to those made before the Committee. Amicus Curiae Brief of the Chinook Indian Tribe Williams v. Watt**, C.A. No. 83-4229 (9th Cir. Feb. 8, 1984).

Since the **Williams** decision the administration has reconfirmed its longstanding recognition of the Quinault Indian Nation's exclusive political and territorial jurisdiction over the Quinault Indian Reservation. The Solicitor General at the request of the Departments of Interior and Justice submitted a brief for the Secretary of Interior in opposition to the Petition for Writ of Certiorari in Williams advising the Supreme Court that, **"The court of appeals' decision does not disturb the federal government's longstanding recognition of the Quinault Indian Nation's exclusive political jurisdiction on the Quinault Reservation."** Elvrum v. Williams, No. 84-943, Brief for the Secretary of the Interior in Opposition at 6 (March 1985) (Emphasis added.)

The Brief for the Secretary and a contemporaneous opinion of the Regional Solicitor dated April 22, 1985, cogently point out the decision in Williams is "exceedingly narrow" and the holding is carefully limited to the Quileute Tribe's interest in the Quinault Reservation for the sole purpose of validating devises of individual trust property under Section 4 of the IRA as it existed prior to amendment in 1980.

5. The 1935 IRA Election

Finally, the Chinooks claim that the election procedures for the 1935 IRA election at the Quinault Reservation support their claim, alleging that nonresidents including Chinooks were permitted to vote on whether or not the IRA should be made applicable to the Quinault Reservation. In fact, however, individuals permanently residing away from the Reservation were not eligible to participate in the election. Only those who certified that they were temporarily living away from the Quinault Reservation, but regarded the Reservation as their permanent home and legal residence were permitted to cast absentee ballots. Moreover, voters were only allowed to participate in a single Reservation election. Thus individuals who voted in the Chehalis Reservation election would not have been eligible to also vote on the Quinault Reservation.

The prohibition on voting in an IRA election on more than one reservation is similar to the Quinault Nation's current prohibition on dual enrollment. And, the Quinault Nation's liberal enrollment policy does not require reservation residency as condition of tribal enrollment, even though Reservation domicile was a condition of participation in the IRA election.

Recent Examples of Federal Recognition of the Quinault Nation's Governance of the Quinault Indian Reservation

The Quinault Indian Nation is a confederated Indian tribe composed of individual tribal members whose ancestry can be traced to the aboriginal Indian groups which the United States hoped to locate on the Quinault Reservation. The evolution of the Quinault Nation into a confederated tribe composed of members of diverse tribal ancestry occurred partly as the result of federal design in allotting many Southwest Washington Indians on the Quinault Reservation, and encouraging them to relocate to the Reservation. In part this confederation is the result of the adoption by the Quinault Indian Nation of an extremely liberal enrollment policy.

The Constitution of the Quinault Nation admits to tribal membership, as a matter of right, any person of 1/4 or more Quinault, Queets, Quileute, Hoh, Chinook, Chehalis, or Cowlitz ancestry or any combination thereof who is not a member of another federally recognized Indian tribe. Article II, Section 1 Constitution of the Quinault Indian Nation. Attachment A. Persons of less than 1/4 blood may be adopted at the discretion of the tribe. Adoption is open equally to persons of Quinault, Queets, Hoh, Quileute, Chehalis, Chinook, and Cowlitz blood. Id.

Contrary to assertions which may be made by certain individuals, membership in the Quinault Nation is not limited to people of Quinault ancestry or to Quinault Reservation residents. In fact, more current members of the Quinault Nation have Chinook or Cowlitz ancestry than Quinault. Attachment B.

The confederated nature of the Quinault Nation and its status as the tribe governing the Quinault Indian Reservation and the beneficiary of tribal lands on the Quinault Reservation has been repeatedly recognized. It is clearly the rightful beneficiary of tribal lands restored to the Quinault Reservation under S. 2752.

Questions with respect to the legitimacy of the Quinault Indian Nation and its authority over the Quinault Indian Reservation have been repeatedly addressed over the years.

1947

In 1947 Congress recognized the confederated nature of the Quinault Nation when it enacted a statute declaring the Quinault Tribe the proper party to pursue "on behalf of all Indians having an interest in the Quinaielt Reservation" an action against the United States arising from the north boundary survey. 61 Stat. 416. The statute reads in pertinent part:

> [T]he Quinaielt Tribe is hereby declared to be the proper party plaintiff for the purpose of further proceedings ... and for the purpose of prosecuting the action to a final conclusion on behalf of all Indians having rights in the Quinaielt Reservation as established under the treaty of July 1, 1855, and January 25, 1856 (12 Stat. 971), the Executive Order of November 4, 1873, and any subsequent acts of Congress.

In support of this legislation the Secretary of Interior advised Congress that it "was proper to refer to the collective group regardless of tribal blood as the Quinault Indians..." The Secretary further advised Congress that "[c]ollectively the Indians having an interest in that reservation, including those of the blood of other tribes consolidated with the Quinault pursuant to the treaty, Executive Order, and act of Congress may be regarded as one tribe." Letter dated May 22, 1947, from Secretary of the Interior to Chair House Committee on Public Lands, reprinted in, H.R. Rep. No. 671, 80th Cong. 1st Sess. (1947). Attachment C.

1960's

Congress has continued to recognize the Quinault Nation as the tribe governing the Quinault Reservation and as the beneficial owner of tribal lands within the Reservation. In 1962, for example, Congress restored to the "Quinault Tribe of Indians" 85 acres of tribal land which had been previously appropriated by the United States for lighthouse purposes. Act of October 15, 1962, 76 Stat. 913. To the same effect is the Act of August 26, 1959, 73 Stat. 427, which also returns tribal lands to the Quinault Tribe.

Other legislative recognition includes:

The Act of June 6, 1934, 48 Stat. 910 recognizing the Quinault Tribe's ownership of tribal timber on the Quinault Reservation. Under this Act tribal timber contracts may be modified and tribal timber may be sold only with the consent of a regularly called general council of the tribe.

1970's
1975

The Commissioner of Indian Affairs in a September 8, 1975 memorandum to the Portland Area Director rejected claims by Helen Mitchell that the adoption of the Nation's 1975 constitution was irregular. Attachment D. While the Commissioner expressed

reservations which caused him to decline to either approve or disapprove the Constitution he stated: "We ... recognize the document as a medium through which the Quinault people elect their representatives and as a guideline for those representatives."

The Commissioner encouraged the Quinault Nation to consider adoption of an IRA constitution the Commissioner, but found no error in the Nation's decision not to organize under the IRA. He stated: "[W]e can find no fault with a tribe determining the nature of its organic document."

It should be noted that the Commissioner's reservations with respect to the Constitution had nothing whatsoever to do with the Constitution's enrollment provisions, nor did the Commissioner question the adequacy of the Nation's representation of all Indians having an interest with the Reservation.

1977

In a July 22, 1977 memorandum by the Acting Associate Solicitor addressing the validity of a zoning ordinance adopted by the Quinault Business Committee pursuant to the 1975 constitution, the Acting Associate Solicitor wrote:

> [T]he 1975 Tribal Constitution is a revision of the Tribe's 1922 By-Laws and by its terms does not require Secretarial approval for it to be effective. Since it is a revision of a pre-IRA constitution, Secretarial approval is not necessary under 25 U.S.C. 476, even though the Quinault's are an IRA tribe. See Sol. Op. October 13, 1976, Re: Crow Tribe an IRA Tribe Operating under a Non-IRA Constitution.

Attachment E. Note also in support of the position that a tribe which has accepted the IRA need not reorganize under Section 16. Kerr-McGee Corp. v. Navajo Tribe, 731 F.2d 597, 603-04 (9th Cir. 1984), affirmed, U.S. (19); Southland Royalty Co. v. Navajo Tribe, 715 F. 2d 486, 489 (10th Cir. 1983); II Opinions of the Solicitor Department of the Interior, 1988, 1992.

1980 - 1981

Around the time that the Quinault Nation amended its constitution in 1975 a group calling itself the Confederated Fish Eating Indians of Western Washington formed and incorporated under state law. This group later changed its name to the Indians of the Quinault Reservation. The IQR has sought to discredit the Quinault Indian Nation's governance of the Quinault Indian Reservation. It seeks to replace the Quinault Indian Nation with a new tribal organization in which membership would be open to individuals with too little Indian blood (<1/4 blood) to enroll in the Quinault Indian Nation and to those who although otherwise qualified for enrollment in the Quinault Indian Nation decline to relinquish their enrollment in other recognized tribes. This group has three basic constituencies:

1) Individuals with too little Indian blood to enroll in any recognized tribe, including individuals who claim membership in the unrecognized Chinook and Cowlitz groups;
2) Individuals who have adequate Indian blood to enroll in the Quinault Indian Nation, but who do not wish to relinquish their enrollment in another tribe in order to become a Quinault tribal member;
3) A small group of dissident members of the Quinault Indian Nation.

In response to the claims of this group the Acting Associate Solicitor for Indian Affairs in a March 18, 1980, opinion reaffirmed the status of the Quinault Indian Nation as the exclusive governing body of the Quinault Reservation. Attachment F. The Solicitor and subsequently the Secretary of the Interior rejected requests to organize a new tribal government for the Quinault Reservation consisting of the allottees and their descendants at the request of this group which at the time was represented by Dennis Whittlesey.

Reviewing this history of Congressional recognition, the Solicitor's 1980 opinion concludes:

> At Quinault a tribal council does exist which Congress has recognized at least since 1947 as representing the Indians of the Quinault Reservation regardless of their original tribal ancestry. This has been reaffirmed at least twice since 1947 when Congress has transferred lands to the "Quinault Tribe of Indians."

(Citations omitted.) This opinion was later affirmed by the Secretary in *Indians of the Quinault Reservation v. Commissioner of Indian Affairs*, 9 IBIA 81 (1981). Attachment G. No appeal was taken.

See also Letter of June 27, 1980, Dale Itschner, Asst. Regional Solicitor to Dan Van Mechlen, Chairman Indians of the Quinault Reservation. Attachment H.

1984 - 1985

In 1985 following the Court of Appeals decision in *Williams v. Clark*, 742 F.2d 549 (9th Cir 1984), the Solicitor for the Department of the Interior advised the Quinault Indian Nation by letter that the "decision in *Williams* does not change the Department's basic view that the Quinault Indian Nation is the Indian governing body for the Quinault Reservation. Letter of

November 28, 1984, Mary Walker for the Solicitor to Joseph B. DeLaCruz. Attachment I.

Several months later the Solicitor General of the United States urged the Supreme Court to deny review of the Court of Appeals decision in Williams advising the Court that:

> The court of appeals' decision does not disturb the federal government's longstanding recognition of the Quinault Nation's exclusive political jurisdiction on the Quinault Reservation. ... [T]he court of appeals did not--and did not purport to--call in question the Executive Branch's recognition of the Quinault Nation.

Brief of the Secretary of the Interior in Opposition, Elvrum v. Williams, No. 84-943. Attachment J.

Contemporaneously, the Regional Solicitor issued an opinion regarding the effect of the Williams decision on implementation of the Indian Land Consolidation Act. The Regional Solicitor concluded the Quinault Indian Nation is the rightful tribal beneficiary of interests in trust land located on the Quinault Reservation which are subject to the escheat provisions of Section 207 of the ILCA. In reaching this conclusion he rejected claims that escheated interests should devolve to other tribal claimants. Memorandum from Assistant Regional Solicitor to Area Director, Pacific Northwest Region Re: Effect of Decision in Williams v. Clark on Implementation of the Indian Land Consolidation Act, dated April 22, 1985. Attachment K.

Note: In Williams v. Clark the Court of Appeals declined an invitation by the so-called Chinook Tribe appearing as amicus and represented by Dennis Whittlesey to recognize the group's tribal status and its claims to the Quinault Reservation.

1985

In 1985 Helen Sanders Kirschling again raised questions regarding the Quinault Nation's authority to govern the Quinault Reservation. In testimony before the Washington legislature in connection with legislation relating to the proposed Quinault Tribal Highway she questioned the Quinault Nation's legitimacy as the governing tribe of the Quinault Reservation. The State Attorney General's Office after reviewing the material submitted by Mrs. Kirschling and contacting the Bureau of Indian Affairs concluded that Mrs. Kirschling's claims were unfounded. Memorandum from Assistant Attorney General, R.A. Wright to D. Berentson, Director, Washington Department of Transportation Re: Quinault Tribal Highway Bill, dated February 27, 1985. Attachment L.

1988

Most recently in response to claims made by certain parties that the Quinault Nation is not the appropriate beneficiary of the lands which would be restored to the Quinault Reservation under S. 2752 the Portland Area Director of the Bureau of Indian Affairs wrote: "[T]here should be no question but that the Quinault Indian Nation is the appropriate beneficiary of this proposed legislation." Memorandum of September 2, 1988, from the Portland Area Director to the Assistant Secretary-Indian Affairs Re: S. 2752. Attachment M.

The History of the Quinault Reservation is Similar to that of Many Other Reservations In Washington State and Elsewhere

The United States at an early date hoped to consolidate a number of tribal groups on the Quinault Indian Reservation. The same is true for many of the Reservations established in Washington State and many other reservations across the country.

The Skokomish Reservation, for example, was also established with the intention of relocating a number of Indian groups and consolidating them. See Executive Order of February 25, 1874 establishing the Skokomish Reservation for the S'Klallam and Twana Indians, although the Skokomish descended from the Twana are now recognized as the tribe of that reservation; see also, Treaty of Point Elliot, 12 Stat 927 establishing the Tulalip Reservation upon which to ultimately consolidate all signatories of the treaty; Treaty of Walla Walla, 12 Stat. 951 establishing the Yakima Reservation for all of the treaty signatories; Executive Order of April 8, 1872 establishing the Colville Reservation for the Spokanes and Coeur d'Alene Indians in addition to the Colvilles and others; Executive Order of November 22, 1873 enlarging the Lummi Reservation for the "Dwamish and other allied tribes"; Executive Order of October 21, 1873 enlarging the Makah Reservation for the "Makah and other tribes of Indians". 1/

At Skokomish the Klallam groups never relocated to the Reservation, though the Skokomish Reservation was clearly intended for the Klallam as well as the Skokomish, and repeated efforts were made to encourage the Klallam to move the reservation. See e.g., Annual Report of the Commissioner of Indian Affairs 1872 at 352; Annual Report of the Commissioner of Indian Affairs 1879 at 154-55. Although some individuals of Klallam descent are enrolled in the Skokomish Tribe and were allotted there, today there are three recognized Klallam Tribes with their own reservations, while the Skokomish are recognized as governing the Skokomish Reservation.

1/ See also e.g., Act of March 3, 1891, 26 Stat. 1095, 1011 setting aside the Annette Islands Reserve for the Metlakatla Indians "and such other Alaska Natives as may join them;" Act of April 15, 1874, 18 Stat. 28, setting aside the Blackfeet Reservation for the Blackfoot "and such other Indians as the President may from time to time, see fit to locate thereon;" Act of March 3, 1865, 13 Stat. 559, setting aside the Colorado River Reservation "for the Indians of the Colorado River and its tributaries." Other Reservations set aside for similarly open ended classes of beneficiaries include: Navajo, Executive Order of January 15, 1917; Northern Cheyenne, Order of November 26, 1884; Mescelero Apache, Executive Order of March 24, 1883.

At Lummi, the Samish and Nooksack, both treaty signatories with the Lummi were intended to locate on the Lummi Reservation. Although some individuals of Samish and Nooksack descent are now enrolled at Lummi and were allotted there, the Samish like the Chinook are no longer recognized as an independent tribal entity, and the Nooksack now have a separate reservation. See United States v. Washington, 476 F.Supp. 1101, 1106 (W.D.Wash. 1979), aff'd, 641 F.2d 1368 (9th Cir. 1981), cert. denied.

Also as previously noted, the United States established two other Reservations specifically for Chehalis, Cowlitz, and Chinook Indians who had refused to participate in a treaty requiring them to relocate to a reservation with the Quinault. The Chehalis Reservation was established in 1864 for the Chehalis, Chinook, Cowlitz and other Indians, Upper Chehalis Tribe v. United States, supra at 445-47 and the Shoalwater Bay Reservation was established by Executive Order in 1866 for "[r]emnants of the Chinook Bands and Lower Chehalis." Id. at 447.

At Skokomish, Lummi, Chehalis, and Shoalwater Bay, as at each of the reservations cited the United States recognizes a single tribal governing body. See e.g. 51 F.R. 25115 (July 10, 1986).

The practice of allotment to Indians who were not members of the tribe governing a reservation and the subsequent fractionization of interests as the result of heirship has led to a situation where the ownership of interests in allotments by nonmember Indians is also commonplace on reservations across the country. When it adopted and amended the Indian Land Consolidation Act Congress was aware that there are many Indian allotment owners who are not members of the tribe governing the reservation on which they hold interests in trust and restricted lands. The hearing record on the 1984 amendments to the ILCA indicates that 73% of the 350,000 Indian allottees studied in connection with a 1958 Indian heirship study owned an interest in an allotment located on a reservation governed by a tribe other than their own. Hearing on H.J.Res. 158 Before the Senate Select Committee on Indian Affairs, 98th Cong., 2d Sess., 9 (July 31, 1984). See also, Hearing on H.J.Res. 158 Before the Senate Select Committee on Indian Affairs, 98th Cong., 1st Sess., 32 (discussing ownership by nonmember Indians of lands on the Salt River Reservation and in Montana), 50 (discussing Shoshone Bannocks of the Fort Hall Reservation owning lands on the Wind River Reservation) (July 26, 1983); S. Rep. 98-632, Senate Select Committee on Indian Affairs, 98th Cong. 2d Sess. 12 (1984).

Conclusion

The Treaty of Olympia required the parties to it to remove to the reservation within one year of its establishment. The enlargement of the Quinault Reservation was, as discussed, intended in part to induce members of a number of tribes to relocate to the reservation.

Many of these Indians did relocate to the reservation where they were assimilated into the Quinault Nation and enjoy equal rights with all other members. In fact a majority of the enrolled members of the Quinault Indian Nation have Chinook, Chehalis, or Cowlitz ancestry. Today the rolls of the Nation remain open to any 1/4 blood Indian descended from any of the tribes which the United States at one time hoped to locate on the Reservation. Upon enrollment such Indians are entitled to all rights of an enrolled Quinault.

The Quinault Nation's liberal enrollment policy is a fair and appropriate response to the Quinault Reservation's history, accomodating the interests of all concerned. The Quinault Nation's 1/4 blood requirement is consistent with numerous statutes defining Indian status for the purpose of federal benefit programs and prohibitions on dual enrollment are in line with long held federal policy.

The Department of the Interior has consistently recognized the consolidated Quinault Nation as the tribe governing the Quinault Indian Reservation. The conclusions of the Department and Solicitor's Office are consistent with the history of the Quinault Reservation and the case law relating to it.

While individual members of other tribes have a recognized right to hold lands on the Quinault Indian Reservation, no tribal group other than the Quinault Indian Nation has been recognized by Congress or the Administration as having a beneficial interest in the tribal lands of the Quinault Reservation or as exercising any governmental authority over the Quinault Indian Reservation.